NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

August 11, 2004

2:19 p.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT McGEE: In the absence of clergy, may we bow our heads for a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, August 10, the Senate met pursuant to adjournment. The Journal of Monday, August 9, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

On behalf of Senator Farley, I wish to call up Print Number 7710, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1910, by Senator Farley, Senate Print 7710, an act to amend the Banking Law.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, on behalf of Senator Farley, I offer the following amendments.

ACTING PRESIDENT McGEE: Amendments received.

SENATOR NOZZOLIO: Senator, my pleasure.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Finance Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could stand at ease.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, the Senate stood at

ease at 2:22 p.m.)

(Whereupon, the Senate reconvened at 2:37 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to report of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bills:

Senate Print 6050B, Senate Budget Bill, an act making appropriations for the support of government;

6056B, Senate Budget Bill, an act to amend the Insurance Law and others;

And Senate Print 7712, by the Senate Committee on Rules, an act in relation to implementing certain provisions.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Without objection, all bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could just stand at ease for about two moments.

ACTING PRESIDENT McGEE: The Senate will stand at ease for a moment.

(Whereupon, the Senate stood at ease at 2:38 p.m.)

(Whereupon, the Senate reconvened at 2:42 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President. Would you please call up Calendar Number 1918.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1918, Senate Budget Bill, Senate Print 6050B, an act making appropriations for the support of government: Public Protection and General Government Budget.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is the public protection and general government bill which has been agreed to between the Senate and Assembly. And it provides, among other things, around $400 million in homeland security funding and for terrorism funding.

It's broken down in a number of areas. It also provides money for indigent parolees, it provides money for district attorneys and considerable money in the criminal justice area, diversion money and so forth.

It also provides money for a number of the state offices, such as the Office of Lieutenant Governor, Division of Military and Naval Affairs. And it also provides for various spin-ups for cities in upstate New York, for the cities of Buffalo, Rochester, Syracuse, and Auburn, Corning, and so forth.

So it is an extensive bill which really mirrors public protection and general government bills which have passed in the last few years.

In fact, one of the things I pointed out is that some of the money in this budget, as relating to specific areas of training and so forth, actually mirrors the money that we did in the last conference committee that we did here a few years ago. And I just wanted to point that out, since I was one of the people that ran the conference committee.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Madam President.

Madam President, I believe there's an amendment at the desk. And I ask that the reading of the amendment be waived, and I also ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR HASSELL-THOMPSON: Thank

you.

The first-responders hostile amendment is given in view of just raising some very serious and some very interesting aspects.

If we were to add $20 million more for state and local first-responders, this would make a significant difference to the State of New York. New York remains at the top of Al Qaeda's list of potential targets. And as a state where the orange alert has become the norm for the state and its institutions, local law enforcement agencies are being asked to take on more and more responsibility to protect our communities across this state.

Following the attacks of September 11th, police and fire departments have had to shuffle job assignments, mandatory overtime, and increasing the numbers of recruiting efforts. Many police chiefs have been forced to pay overtime, borrow officers from other agencies, and put more volunteers on the streets. Some police departments are now recruiting retired police officers to fill

the gap.

Police precincts in New York City have reduced their forces by more than 3,000 officers since the year 2001. And although no layoffs have occurred, through attrition, we have not brought in new -- we have not filled these unfilled positions.

Due to the budget cuts and our shortfalls, a significant reduction in federal support, many of our localities are cutting their police forces and they're closing innovative law enforcement units that helped to reduce crime in the 1990s.

From 1995 to 2000, officers hired in Albany with COPS funds prevented 141 violent crimes and 561 property crimes. Officers hired in Schenectady with COPS funding prevented 77 violent crimes and 318 property crimes, while officers hired in Troy -- and the numbers go on and on and on as we go from city to city.

Between 1994 and 2002, New York has reduced crime by 49 percent. And that's not by accident, but rather that is by the valiant efforts of our men and women who are police

officers across this state. However, they need more resources to continue to fight crime effectively.

Firefighters too have suffered sharp reductions in funding. In 2003, six fire stations were closed due to budget cuts, endangering firefighters, victims and entire neighborhoods whenever a fire may break out. Many fire departments still lack adequate communications systems and other basic equipment, like breathing apparatus.

Federal funding for grants to local police, fire, and emergency medical agencies are being cut from $4.2 billion in fiscal year 2004 to $3.5 billion in fiscal year 2005, more than a 15 percent decrease.

While these may sound like numbers to you, it speaks to the fact that violent crime is now again on the increase and more funding is needed to maintain the successes that were achieved in making New York safer in the 1990s.

Please add $20 million more for our state and first-responders. They are our first responders.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Yes, I rise to speak in favor of the hostile amendment introduced by Senator Hassell-Thompson.

I think it's an excellent amendment, and I will support it. And I will support it for the reason of greater police security, which does not exist, unfortunately, in many working-class, lower-income areas. The bill would enhance police protection and fire protection in low-income and moderate-income areas such as my district, which includes Staten Island.

I would even go further. We all suffered during 9/11, but percentage-wise, the Borough of Staten Island lost more firefighters, more police officers than any other borough in the City of New York. And these are working-class people.

What we need now is greater strength and security to enable us to hire more police officers and more firefighters in Staten Island, in the five boroughs, and in

the entire State of New York.

Thank you.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President.

Let me also rise briefly to support the amendment that calls for an additional $20 million for state and local first-responders.

I think Senator Hassell-Thompson laid it out well when she highlighted the fact that Al Qaeda seems to still be very focused on New York State. And this is not just the City of New York, this is the entire State of New York.

I think when you look at our population centers outside New York City -- Albany, Syracuse, Rochester, Buffalo, where I come from -- there's a real need to give first-responders the financial tools that they require to be able to keep police departments and fire departments strong and well-staffed with the appropriate number of personnel.

I know that in Western New York,

when we look at Buffalo and we look at Niagara Falls, we're on the Canadian border. And when Secretary Ridge just a few days ago talked about some of the areas of focus for Al Qaeda, the border between the United States and Canada was looked at as a -- was mentioned as a secondary target.

So I think for those reasons we certainly have to look at this amendment and we have to look at the need for this funding in New York State.

You know, let me also suggest -- and I think it was also pointed out by Senator Lachman and Senator Hassell-Thompson -- that the federal commitment, unfortunately, to important programs that put more police on our streets and kept fire departments fully staffed seems to be reduced significantly.

I know that in the City of Buffalo, through attrition, we too have lost a lot of police officers. And with the loss of police officers this year we have seen an uncomfortable, an unpleasant spike in violent crime, where our homicide rate has jumped by astronomical numbers. And I can only tie that

back to the fact that we do have less police officers on our streets.

I think that this additional $20 million that the amendment calls for merits support, and I'm calling on all my colleagues in the chamber to support this amendment.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Madam President, on the amendment.

We currently have put an extra strain, a burden on the New York City Police Department, the NYPD. I represent a district in Queens County, and there's a special burden being placed on the NYPD precincts in Queens County because we have to respond to any incidents that occur on Roosevelt Island. And Roosevelt Island, as you know, is attached to Manhattan. It is part, I believe, of the Manhattan community planning districts, the school districts and so on.

And yet, because of the uniqueness of Roosevelt Island, the precincts in Queens

are the first responders. It is -- the only way, aside from the tram, that you can get to Roosevelt Island is by automobile through Queens County. And therefore, my precincts are being overburdened, they are losing time in their responses because we have to service the people on Roosevelt Island.

And I think this amendment introduced by Senator Hassell-Thompson is a very, very constructive step toward alleviating this municipal overburden, if you will, on the New York City and the Queens County police department.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Brown, Diaz, Dilán, Duane, González, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I believe there's an amendment at the desk. I ask that the reading of the amendment be waived, and I would like to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR MONTGOMERY: Thank you.

Madam President, I think that Senator Hassell-Thompson acknowledged, as I do, that I'm very pleased with the restorations that have been made by the Legislature. And certainly I don't intend to represent that I do not agree with the passing of this part of our budget.

However, there is an extremely important aspect that is missing. And as I raised yesterday the issue of the funding for youth employment, today I raise the issue of funding for alternatives to incarceration. And I see those as being related.

I have, in my district, a community court, and the success of that court depends

on the fact that the judge in that court has access to 14 different agencies, a number of them offering alternatives to incarceration where he can assign people to one or the other or several of those agencies and programs, to keep us from spending, in the case of a young person, $90,000 a year or, in the case where if he were in a regular court and they were remanded to prison, we would be spending $40,000 to $50,000.

So these are programs that save money, offer alternatives for the judges, for courts, for the district attorneys, and are an extremely important aspect of reducing recidivism as well as helping communities to be able to accommodate people without sending them to long-term incarceration.

And so I ask that my colleagues on the other side join me in restoring this funding. Certainly at least over 150 programs across the state would benefit tremendously. This is really money that would be going to communities. And it would be helping to strengthen the capacity of communities to accommodate people in their own communities.

This I recognize, Madam President, comes from the donkey side of the house, but I invite the elephants to join the donkeys. Let us vote together, today in our animal house --

(Laughter.)

SENATOR MONTGOMERY: -- yes on this amendment.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Montgomery.

Senator Diaz, you wish to speak on the amendment?

SENATOR DIAZ: Yes.

ACTING PRESIDENT McGEE: Senator Diaz, on the amendment.

SENATOR DIAZ: Yes, Madam President, on the amendment.

Again, I represent the 32nd Senatorial District in the Bronx. And one more time we're hearing Senator Montgomery presenting an amendment to restore money for our communities. Every time -- this is my second year in this animal house, as she called it. And every amendment that has been presented to restore money for poor

communities has been presented by this side of the aisle, by us Democrats.

And it is sad to see that every time that we Democrats present an amendment to restore money to help our communities, they're always rejected by our colleagues on the Republican side. I don't mean to say that our colleagues on the other side don't care about our communities. I'm just saying that for whatever reason, we are the ones presenting always amendments to restore money.

Yesterday we presented an amendment to restore $10 million for youth and summer programs for our youth, and it was declined, denied, rejected, with the vote of the Republicans, and only us Democrats voted for it.

We presented an amendment to restore money for children and families and health, and again, that amendment to restore money for children and families was rejected by the other side, and only us Democrats voted in favor of the amendment.

We presented an amendment to restore $20 million for the first responders,

meaning firemen and firehouses. One more time we have seen that amendment going down the drain with the vote of the other side of the house and only us Democrats voting for it.

Now there is another amendment here presented by Senator Montgomery. When, when is it that the other house -- the other side, the elephant side -- will join us, the Democrats, in restoring money to help our poor communities, our communities in need in our cities? It is a shame to see this amendment now again going down the drain, like many other amendments that would benefit our communities.

So I'm calling on the other side to join us now, and let's approve this amendment once and for all. And let's show the whole state that we are together here and that we care about our communities.

Thank you.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Diaz,

Dilán, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is not agreed to.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1918, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9550B and substitute it for the identical Senate Bill Number 6050B, Third Reading Calendar 1918.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1918, Assembly Budget Bill, Assembly Print Number 9550B, an act making appropriations for the support of government.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Krueger, to explain your vote.

SENATOR LIZ KRUEGER: To explain my vote.

Thank you, Madam President. On the bill.

I do think that we made some improvements in this bill over the Governor's proposed bill. But as I said yesterday on the budget bill and will stand by today, we should not be doing expenditure bills before we do revenue bills for the State of New York. We don't know what our budget availability is, and yet we're spending the money.

So I will vote no on this bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Krueger, are you recorded in the affirmative?

SENATOR LIZ KRUEGER: In the negative.

ACTING PRESIDENT McGEE: Senator Krueger will be recorded in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 1918 are Senators Duane, Hassell-Thompson, and L. Krueger. Ayes, 51. Nays, 3.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 1919.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1919, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9556B and substitute it for the identical Senate Bill Number 6056B, Third Reading Calendar 1919.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1919, Assembly Budget Bill, Assembly Print Number 9556B, an act to amend the Insurance Law and the State Finance Law.

ACTING PRESIDENT McGEE: Read the

last section.

THE SECRETARY: Section 2 --

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, very briefly on the bill.

This is the language bill accompanying the appropriation bill we just voted on. I also will vote in support of this legislation. And this bill in particular has the language in it restoring some of the most critical cuts that we are -- shortsighted cuts that the Executive made that we are fixing with this legislation. In particular, I am pleased at keeping some of the facilities open -- the Fulton work-release prison in the Bronx and others.

And so I will be voting for this bill, as I did for the bill that we just voted on. And I'd like to thank the sponsor for an excellent explanation.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and L. Krueger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar Number 1920.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1920, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11795 and substitute it for the identical Senate Bill Number 7712, Third Reading Calendar 920.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1920, Assembly Budget Bill, Assembly Print Number 11795, an act in relation to

implementing certain provisions.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you. Thank you, Madam President.

I rise to request unanimous consent to be recorded in the positive on Calendar Number S6050B.

ACTING PRESIDENT McGEE: Without objection.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President,

there will be a Rules Committee meeting at 3:15.

And if the Senate would stand at ease now, pending the return of the Rules report.

ACTING PRESIDENT McGEE: A Rules Committee meeting at 3:15 in the Majority Conference Room.

The Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 3:09 p.m.)

(Whereupon, the Senate reconvened at 3:37 p.m.)

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, may we return to reports of standing committees for the reading of the Rules report, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 973A, by Senator Farley, an act in relation to affecting the health insurance benefits;

1803, by Senator Stavisky, an act to amend the Education Law;

6656C, by Senator Hannon, an act to amend the Public Health Law;

7720, by Senator Volker, an act to amend the Criminal Procedure Law;

7733, by Senator Hannon, an act to amend the Public Health Law;

6473B, by Senator Kuhl, an act authorizing the City of Corning;

7054B, by Senator Hannon, an act to amend the Insurance Law;

7633B, by Senator Skelos, an act to amend the Correction Law;

7658, by Senator Balboni, an act to amend the Education Law;

7694A, by the Senate Committee on Rules, an act to authorize the City of Elmira;

7704, by Senator Skelos, an act to amend the Arts and Cultural Affairs Law;

7709, by Senator Golden, an act to amend the Real Property Tax Law;

7713A, by Senator Flanagan, an act to amend the Executive Law and the Criminal Procedure Law;

7715, by Senator Meier, an act to amend the Social Services Law and a chapter of the Laws of 2004;

7717, by Senator Balboni, an act to amend a chapter of the Laws of 2004;

7718, by Senator Robach, an act to amend the Corrections Law;

7721, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

7726, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 7729, by Senator Robach, an act to amend the General Obligations Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Move to accept the reports of the Rules Committee.

ACTING PRESIDENT McGEE: All in favor of accepting the report of the Rules

Committee will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Rath.

SENATOR RATH: May we please take up the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1197, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill Number 10834B and substitute it for the identical Senate Bill Number 6656C, Third Reading Calendar 1197.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1197, by the Assembly Committee on Rules, Assembly Print Number 10834B, an act to amend

the Public Health Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2005.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1921, by Senator Hannon, Senate Print 7054B, an act to amend the Insurance Law and the Public Health Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1922, by Senator Skelos, Senate Print 7633B, an act to amend the Correction Law, in relation to proceedings.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1923, Senator Balboni moves to discharge, from the Committee on Rules, Assembly Bill Number 11649 and substitute it for the identical Senate Bill Number 7658, Third Reading Calendar 1923.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number

1923, by the Assembly Committee on Rules, Assembly Print Number 11649, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1924, by the Senate Committee on Rules, Senate Print Number 7694A, an act to authorize the City of Elmira.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1925, by Senator Skelos, Senate Print 7704, an act to amend the Arts and Cultural Affairs Law, in relation to exempting.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1928, by Senator Meier, Senate Print 7715, an act to amend the Social Services Law and a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1931, by Senator Maziarz, Senate Print 7721, an act to amend the Vehicle and Traffic Law and the State Finance Law.

SENATOR RATH: Madam President, is there a message at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR RATH: Move to accept.

ACTING PRESIDENT McGEE: All those in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1934, Senator Farley moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 4962A and substitute it for the identical Senate Bill Number 973A, Third Reading Calendar 1934.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1934, by Member of the Assembly Abbate, Assembly Print Number 4962A, an act in relation to affecting the health insurance benefits.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Farley.

SENATOR FARLEY: Pass the bill now. I just want to explain my vote.

ACTING PRESIDENT McGEE: Senator Farley, to explain his vote.

SENATOR FARLEY: This is a very significant piece of legislation, one that has been a long time in coming this year. It passed the Assembly in February.

In essence, what it does is protect every retired employee in the State of

New York with their health insurance, that they cannot change the health insurance for the retired senior unless they change it for everybody. They can't diminish it. And it's supported by almost everybody that you can think of.

The teachers already have that, the teachers -- retired education people have this. But this covers every other retired public employee. It's terribly important, terribly significant.

I noticed that AARP was here a moment ago in the gallery. I just wish they could have been here to see this bill passed, because it's a very significant piece of legislation and one that has been a long time in coming. I urge everybody to support it.

Thank you.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1935, by Senator Stavisky, Senate Print 1803,

an act to amend the Education Law, in relation to providing a program fee option.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Madam President, I understand there's several bills here in front of us that were not on the calendar. Can I please have the numbers of the one that came out of Rules that are not on the calendar so I can understand what it is we're doing?

ACTING PRESIDENT McGEE: 1197 was substituted and passed. 1934 was passed. 1935 was passed. And that's the last one you had that had a question to it; it was Senator Stavisky's bill.

SENATOR MORAHAN: Take away the "lay it aside."

ACTING PRESIDENT McGEE: Thank you very much.

The Secretary will read.

THE SECRETARY: Calendar Number 1936, by Senator Volker, Senate Print 7720, an act to amend the Criminal Procedure Law, in relation to capital punishment.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR RATH: Move to accept.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message of necessity is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Volker.

Senator Volker, an explanation has been requested by Senator Paterson, I believe.

SENATOR VOLKER: Sure.

This is a bill that the Governor sent us the other day relating to the issue of the deadlock provision of the death penalty. There's been a lot of discussion on this. And of course if you're pro-death penalty, I guess you have an entirely different perspective on it than if you're anti.

I do have some problems with the defense attorney, by the way, who are claiming that this has an ex post facto problem. I think they probably didn't read the bill. Because ex post facto provisions really relate not to sentencing but to convictions. And

what this bill does, by the way, in a different way -- and I guess the best way to explain, first of all, what the provision is.

The bill says that the jury, after a conviction for a capital offense, or a potential capital offense, then commences a proceeding which makes a determination as to what the sentence or the punishment is.

Now, when we did the bill in 1995, there was considerable discussion over how to do it. Very honestly, my recollection is that what the Governor does here is what I really wanted in 1995. Because what it does is it gives the jury the maximum ability to make a decision -- death penalty, life without parole, or life sentence. You give the jury, which is traditional American justice, by the way, the ability to make a decision.

And then if they can't make a decision, if they're deadlocked -- and there are provisions in there as to how the judge does it -- then the sentence would be life without parole.

Now, under the bill that we passed in '95, and I was the sponsor, and there was

considerable debate on the issue of the deadlock provision. And in fact, the Court of Appeals rather, I think, cleverly used some of that debate. And Dick -- or Richard -- oh, my gosh, I'll lose his name. But -- Dollinger, Dick Dollinger and I, who were debating a lot in those years, talked about that provision. And he questioned the deadlock provision.

And what I said was, if I remember right, personally I thought that the old deadlock provision, which said that you had the possibility of death penalty or life without parole and the alternative in a deadlock was that you went to the judge, who could sentence to a life term. Which was 25 years, essentially, to life.

You know, the Court of Appeals, in what I consider an extremely odd decision, I always felt that that alternative was much more favorable to the defendant. And that's really the reason, if my recollection is correct, that we decided on that. I didn't think that there was any constitutional problem with it. I felt that it was more favorable to the defendant. And that's why I

have some suspicion as to what the Court of Appeals did.

But now we're going to go back to the traditional-type sentencing. And that is, you give the jury the maximum decision and then you revert to life without parole. And that's what the Governor has sent us.

The Assembly actually pretty well gave us this language in part of the debate. And the reason they did, by the way, was that we had a stronger provision in here relating to remand. And by that I mean the cases that have already been decided -- and there's only a couple -- where people have been convicted and then the death penalty was potentially authorized and the Court of Appeals has remanded.

And the LaValle case, as I understand it, has already been pled out, so I don't think it will have any -- this will not have any impact.

And the language that was in one of the original bills that the DAs wanted is out. But if you read Section 5, it says: "This act shall take effect immediately and shall apply

to crimes committed prior to, on or after the effective date of this act." That refers really to -- obviously to sentencing, because you can't go backward and give a sentence that wasn't there.

The district attorneys will probably argue: Well, you're giving an additional sentence. Well, the additional sentence is a weaker one than was in -- the jury had in the first place. So it seems to me that that ex post facto argument is not valid at all.

Now, if you don't like the death penalty, if you're opposed to the death penalty, I'm sure you're probably going to say this is probably not correct and so forth. If you're in favor of the death penalty, if you look at the numbers, if you look at what's happened since we restored the death penalty, it seems to me you're going to be in favor of this.

The next question you're going to ask me is has the Assembly agreed to this, even though they gave the language, and the answer is no. Not so far. My good friend Joe

Messina here tells me it's not even introduced in the Assembly. However, personally I think ultimately we will come to an agreement on this.

But as of right now, this is the bill that the Governor has sent to us. This is the bill that the Senate is adopting. But the Assembly is, at this time, at least, not agreeing to any death penalty provision that supposedly corrects the supposed mistake that we made back in 1995.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator Volker yield for the questions that he --

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

The Senator yields.

SENATOR PATERSON: He answered some of my questions. He has that quality and that ability to at times anticipate with great accuracy. So I was wondering if Senator Volker would yield for --

SENATOR VOLKER: Certainly.

SENATOR PATERSON: Senator, how does the bill regard any crimes that would have been committed between June 24th, which is the date of the court decision -- actually, June 23rd, and today, being August 11th -- in other words, that period of time? How does the bill regard any offenses that would be committed in that period of time?

SENATOR VOLKER: It will treat it the same. The provision that I read to you reads that it shall take effect immediately and will apply retroactively.

Now, I don't believe there have been any cases -- since the LaValle case, there's been no cases that have been decided. That is, no juries have received any cases. So there are no new sentencing cases since then. This, as I said, only applies to sentencing.

Because the key provision or point here is we have a two-tiered system which is -- that most of the country now has, you first decide guilt or innocence and then you decide the sentence with a second jury.

SENATOR PATERSON: Madam

President, if the Senator would continue to yield.

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR PATERSON: So, Senator, your interpretation is that the sentencing part of the legislation can be disconnected, for purposes of legislative review, from the original bill, but that there is a message or there certainly is public policy that New York State has the death penalty should there have been or should there be a crime committed in this particular time? Since, as you said, the Assembly is not going to address this issue today.

SENATOR VOLKER: Well, I guess the answer is if a crime -- a murder would have been committed -- and I don't believe there were any that were committed that I'm aware of between June -- that are subject to the death penalty. I know there were no trials. But I don't believe -- there could have been, but I don't really know of any that were.

But you are right, if there were -- what I think what Senator Paterson is referring to is let's say that there was a murder that the DA's looking at after June whatever it was, the date of the decision. Then that case could be -- this statute would be applicable, the sentencing part of it -- because the only change is in sentencing -- would be applicable to that case.

And you are right.

SENATOR PATERSON: Thank you, Senator.

If the Senator will continue to yield.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: And on issues such as the one in the LaValle case, would this reflect your feeling on this matter that here, if there was an error -- because there are many who feel there really wasn't, since there was a different jury charge in this case

than the one that the law probably would have called for -- that in that type of situation, that, since the defendant is already convicted -- that has already been established, society has already ruled on the guilt or innocence -- now the question is what were the parameters of the sentencing decision so that there couldn't be any opportunity for a retrial that would -- might just be another opportunity to examine the sentencing phase? Is that correct?

SENATOR VOLKER: That's correct.

And we've done some research on this whole issue. And because all the sentencing options were already available -- in fact, what's fascinating about this is that we're actually giving another sentencing option. I mean, not only were the options available to a jury, but now actually we're giving an additional option.

One could argue that this case is more favorable to a defendant than the previous provision because the jury has the right to look at simply life without parole -- I'm sorry, life sentence, which is 25 to life,

as you know.

One of the things, by the way, I just want to mention about that a lot of district attorneys are not aware of, very few people who are sentenced to 25 years to life get out after 25 years. Very, very few. In fact, there's a whole number -- I checked, because I'd been asked to try to help some people who have been in for like 35 or 40 years, and parole boards are very reluctant to let convicted murderers out who have been sentenced to 25 years to life. And there was a lot of them years ago, because -- well, because they're murderers and they are reluctant to let them out. I just want to point that out.

SENATOR PATERSON: Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: On the bill.

ACTING PRESIDENT McGEE: Senator Paterson, on the bill.

SENATOR PATERSON: I want to thank Senator Volker for his answers. I

remember the discussion that Senator Volker and Senator Dollinger, who was here at the time, and I had on the record on this issue in the beginning of the session in 1995 when the death penalty was first passed. The two of us opposed it rather virulently. I don't think that our point of view has changed particularly much since then.

But in the institutional sense, I think that I respect our system and recognize that there can be technicalities to pieces of legislation which might extinguish it for the moment, but that the spirit of the feelings of the people in the State of New York, as much as they are different from my personal feelings, that we can see why there's an attempt to bring this bill before us this afternoon.

But the idea that this bill was coming really has been very short-lived. There haven't been any public hearings on this legislation. There hasn't been any real further perusal to see what it is that we're doing now and to make sure that it's within the boundaries of constitutionality, where the

ruling has been that in 1995 our action was not.

As Senator Volker honestly pointed out, the Assembly is not taking this bill up right now. And I don't see what the rush is. And to be perfectly candid, I think even when we're not in a rush, I'll probably vote against the bill.

But just in terms of the collaborative effort that we as a legislature are making, I think we probably could do a little bit better job where our constituents and the citizens of the State of New York are concerned.

I don't urge a no vote on this particular legislation. I'm not really sure if the post hoc, ergo propter hoc element of the bill, where there is some sort of ruling after the fact, even when the Court of Appeals has struck down the bill, would not apply here.

Certainly I understand that where a defendant is already convicted, there would be really no way that I could see that there would be a retrial. But for a gap where there

is no legislation covering a particular entity, I think there was a Florida case some years ago that showed that you really couldn't invoke the death penalty where there isn't one in statute at the time of the actual crime.

And those are some of the issues that I think just need to be resolved and negotiated with the Assembly before a proper bill comes to this house. And at that time, I'll vote against it, but at least I'll feel that we have gone through all the steps that probably would be apparent to designate such a piece of legislation to be within the framework of our state constitution.

So the only other thing is this is an issue that Senator Volker has worked on for a long period of time, probably a discussion that he and I have had since I got here 19 years ago. And in spite of the fact that we disagree, his persuasive powers and his ability to in many ways enlighten the feelings of those who have lost relatives to the heinous crimes for which the perpetrators become eligible for the death penalty is quite laudatory. He is very outstanding and has

represented these points of view very well and has at times shaken what I thought were unalterable positions that I've had on the legislation. And it's good to know that even in disagreement that you have a colleague who accords themself with such dignity and expresses his point of view with such accuracy.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: On the bill, Madam Chair.

ACTING PRESIDENT McGEE: Senator Lachman, on the bill.

SENATOR LACHMAN: I'd like to preface my remarks by stating that I am not in principle opposed to the death penalty. The death penalty bill was passed a few months before I entered this chamber. In fact, if I had been there, I probably would have voted for the bill.

But I have serious concerns about the bill in front of us today which I don't look upon as a litmus test of whether one is in favor or opposed to the death penalty.

The question is, why are we rushing? There have been no public hearings. There has been inadequate public review. The district attorneys of New York have not been involved. The major religious organizations of the state are opposed to this, and yet we haven't brought them into the process. I didn't even see the bill before today.

Ladies and gentlemen, I would like to posit the premise that this can be called Exhibit A for a dysfunctional state legislature. Over the last ten years, New York has spent $170 million on the death penalty. No one has received the death sentence.

Three years ago, His Holiness Pope John Paul II arrived in America and went to Illinois, specifically to meet with Governor George Ryan. Governor Ryan was strongly in favor of the death penalty bill that was being debated by the Illinois state legislature. His Holiness spent three hours pleading with the governor, saying: I don't want you to give up on your principles in favor of the death penalty. All I want you to do is

convince a majority of the Republicans in the state legislature to ask for a moratorium to review this, to give it more time, to bring more people into the process before a decision was made. Especially in light of the new evidence that DNA has brought to our attention, and especially, in fact, as well some innocent people having received the death penalty.

Governor Ryan had a totally different point of view before the meeting with His Holiness the Pope than he had afterwards. He asked his colleagues in his party not to be in favor or opposed to the death penalty but to create a moratorium for further study, for greater involvement of agencies and organizations that have not been involved.

And that is all I seek. For someone who is not in principle opposed to the death penalty, I want a moratorium. I want more information. I want more hearings. I want greater review. I want individuals and organizations that have not heretofore been involved to be involved in the process.

Therefore, I will be voting against this bill.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

For all intents and purposes, my understanding is right now the State of New York does not have, does not have a death penalty bill. The Court of Appeals, in their June 24th decision ruling that the death penalty is unconstitutional, put a moratorium in place, and it gives us a perfect opportunity to abolish the death penalty permanently. Life without parole is a fair and viable option that this house should be open to, and we should not be doing anything to fix the death penalty.

This is not a technical fix. It is asking us to reinstate a death penalty while one does not legally exist in New York State. Under the Court of Appeals decision, life imprisonment without parole is the only available sanction for first-degree murder if we do nothing legislatively.

More importantly, 66 percent of those Democrats who have been polled around New York prefer a sentence of life without parole for people who have committed murder, while only 25 percent preferred the death penalty.

The statistics go on, but that's not the issue. What is at issue is that there are 270 organizations across this state that have called for a moratorium on the death penalty. The New York City, Buffalo, Albany, Mount Vernon, and Rochester City Councils, the Syracuse Common Council, and other municipalities have also called for and sent resolutions calling for such a moratorium.

This call in a sense has been answered by the Court of Appeals. We should leave the death penalty alone. It would be foolhardy to fix it. All the reasons to oppose the death penalty in 1995 continue and have grown more significant. Since 1973, at least 114 innocent people have been sentenced to death in the United States. New York taxpayers have spent at least $170 million on the death penalty, although no executions have

taken place. Think how much good this money would do if it were reallocated to communities such as those that I represent.

We must speak with one voice in this effort, and that voice must say we should let the death penalty die.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: I share my colleagues' concern on the issues that they have raised, particularly Senator Lachman and Senator Ruth Hassell-Thompson's points about why we shouldn't go forward today, particularly since this is such a critical issue for the public, for the morality of this state, and for our role as legislators.

And why would we do this bill before it's even aged three days, before we've had public hearings, before we've reviewed the evidence of the times.

And Senator Paterson and Senator

Volker had a discussion revisiting the debates of 1995. And I wasn't in the Legislature in 1995; I like to believe I would have voted against the death penalty bill then. But even if I had been here and hadn't, we have nine more years of data since then. And that data shows that we should not move forward with this bill today.

One, as was said earlier, we now have life in prison without parole. We did not have that as an option in New York State in '95 when the death penalty was passed.

Two, in the last nine years we've seen radical changes in the ability to uncover new evidence through DNA technology, evidence that is not actually always available to individuals convicted of murder in our state.

Three, we have data from our own nine years of the death penalty in this state documenting that it's not working, even before the court overturned, on constitutional grounds, our law.

As Senator Hassell-Thompson said, we spent $170 million on the death penalty, dramatically more than the cost of life in

prison for every person who has been on death row in New York State.

We have documentation that although upstate New York counties account for only 20 percent of all homicides in the state of New York, they account for 65 percent of all capital prosecutions. We know that in six of 62 counties in New York, 65 percent of all death-noticed cases have gone to court, and yet since 1995 there were seven death sentences issued. Three of the seven in Suffolk County, a misdistribution of the use of this law.

The death penalty does not act as a deterrent. That has been documented throughout this country.

Those who murder whites are more than twice as likely to face the death penalty as those who murder blacks, raising serious questions about the racial discrimination questions in death-penalty law.

Of the 459 defendants indicted for first-degree murder in the state of New York since 1995, 59 percent were black, 19 percent were white, and 20 percent were Hispanic. Of

the fifty defendants where a death notice was filed, 48 percent were black, 40 percent were white, and 10 percent were Hispanic.

That's New York State. But we have much more data from the country as a whole where the death penalty been implemented for a longer period of time, with people put to death. And in fact, the data from around the country is truly frightening. The definitive report on the analysis of death penalty cases and error in capital cases that was put out through Columbia University, "A Broken System," a two-part report, highlights that.

Sixty-eight percent of all death verdicts imposed and fully reviewed in this country during the period 1973 to 1995 were reversed by courts due to serious errors -- 68 percent of the cases throughout the country.

And an analysis presented that 76 percent of the reversals at the two appeals stages where data are available for study were because defense lawyers had been egregiously incompetent, police and prosecutors had suppressed exculpatory evidence or committed

other professional misconduct, jurors had been misinformed about the law, or judges and jurors had been biased.

Eighty-two percent of the cases sent back for retrial at the second appeal phase ended in sentences less than death, including 9 percent that ended in not guilty verdicts.

The data from throughout the country for the period '73 to '95 is showing us why we should not move forward to reestablish a death penalty in New York State.

The data shows that indiscriminate use of the death penalty is creating a high risk of mistakes to occur. It is showing, the data is showing that race and politics and a poorly performing law enforcement system leads to errors. And in fact, having a death penalty increases the likelihood of errors in the already overburdened and underfunded state court systems, even for non-death penalty cases.

The findings of the reports are startling. The higher the rate at which a state or county imposes death verdicts, the

greater the possibility that each death verdict will be reversed because of serious error. The more states impose death penalty sentences in cases that are not highly aggravated, the higher risk of serious error.

Comparisons of particular counties and states throughout the country, their capital sentencing and their capital error rates, illustrate a strong relationship between frequent death sentencing and error, meaning the more you use the death sentence, the more likely you are to have a higher and higher rate of error in your decisions.

There are many pressures out there associated with the overuse of the death penalty. I would argue that those pressures are why we are dealing with a bill without it having even aged three days and no discussion with the public and no hearings, and no opportunity for the public to send a message to us about how they feel about the death penalty based on all of the data that is out there.

The states that have used the death penalty have found that it increased their

costs and kept their system from doing their job. States have found that the poor quality of trial proceedings has increased the risk of serious and reversible error. Chronic capital error rates have persisted over time. We're not getting better at it, as many states have had a death penalty in place now for nearly 20 years. And state and federal appeals judges cannot be relied upon to catch all the serious trial errors in capital cases.

I urge this Legislature not to rush forward. As was said, the decision by the courts has basically null and voided the death penalty in New York State. That is a better position for us to be in, given the evidence that is out there and growing throughout the country.

We made a mistake in '95. Perhaps we didn't have all the evidence then. I believe that we do now, and we owe it to the public to give them the opportunity to participate in hearings with experts about where New York State should move forward from, here and now in 2004.

I urge my colleagues to vote

against this bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I voted against this bill once, or the predecessor of this bill. And I voted against Senator Volker's first death penalty bill from 1978 until 1994, virtually every year. In the early years, it didn't pass by so much, nor was it overridden here. In the early years, in fact -- you know, from '78 to '82, there were more than a handful of Republican Senators who were against it. And virtually everyone on this side of the aisle -- not everyone -- was against it.

Attitudes change. Political attitudes change. But certain realities don't change. In 1995, when we voted on the death penalty last, I was privileged to still have living then my grandfather, who was born in 1890 and died in 1995. He was an Irish-American, born about a year after his parents emigrated. He was a working man.

Never made more than 90 bucks a week in his life. That's what he was making when he retired in 1955.

He grew up poor. He was a semiprofessional athlete on the weekends. He was a very religious and pious person. He loved to hunt. As I've said before, he taught me how to shoot and hunt and so on. He wasn't what you'd call a shrinking liberal, although as a young man he was involved in organizing attempts at places he worked. He was in the rubber workers' strike of 1912.

And I remember as a young boy you'd hear about the death penalty, you'd hear somebody's going to the chair. And I said to him: "Gee, what about that?" And he said, "That's a very bad thing." And we said, "Oh, are you against that?" And he said yeah. Because in his experience -- see, today we focus on black and brown and white and who's most likely to get the death penalty.

And I'm not suggesting that a hundred and some years ago black folks in America did not have this penalty inflicted upon them disproportionately, because I'm sure

they did. But so did everybody else who was on the back.

My grandfather pointed out to me -- and you have to know your history, but if you know what went on in the '20s and the '30s, Loeb and Leopold lived; Sacco and Vanzetti were executed. Sacco and Vanzetti were poor. Loeb and Leopold's families hired the great Clarence Darrow, at an astronomical fee. There are various discussions -- some people -- Darrow tried to let on he got 50,000. There are those who say he got $250,000 to defend them.

As we know, he pled them guilty and then spent two or three days pleading for their life, to the point where he got the judge crying and they got life in prison. But they were rich. As John Marchi once said in a debate on this, show me the millionaire who went to the chair. It's a rare, rare event.

The fact of the matter is, it's never been applied fairly on a socioeconomic basis. There was a column about 25 or 30 years ago in one of the newspapers where the columnist actually went to the death house, I

don't know if it was Green Haven or Ossining, in the late 19th and early 20th century. They had logbooks, they had a logbook of those who were executed. And the interesting thing is it's like a social history of New York State.

You look in the 1880s and the 1890s, early 1900s, and you see names like Bat Shea. I think that means something to someone who wrote a book about it, our parliamentarian. But you see a preponderance of Irish-American names. And shortly thereafterwards, you see yes, there were Jewish gangsters. You see Jewish names. And we all heard of Lepke Buchalter and others who were executed. And there were Italian-American names. And then, as you got into the '40s and '50s, there are names that sound like they're African-American. And then, yes, the Latinos as we got into the '50s start predominating in that logbook, that running list of death of those killed by the state.

Murderers? Yes, many or most were murderers. They certainly were all convicted of murder. But why the clumping that way?

They weren't the only murderers. Those ethnic groups weren't producing the only murderers, they just happened to be the folks on the bottom, the folks who didn't have a million bucks for their defense. And they got the chair.

Any penalty that so discriminates that way can't be fair, can't be a real deterrent to all who would wantonly murder. Because if you're rich, first of all, forget whether you get the chair. Your likelihood of being convicted if you're rich is less because of the kind of defense you can mount. And then if you are convicted, your likelihood of being executed goes down.

Secondly, Madam President, we've learned so much since 1995. You know, in all those debates that I participated in from 1978 to 1994, people would say on the floor, opponents would say: It's a final, irrevocable penalty. And when we make a mistake, and you know it's bound to happen, we're going to execute an innocent person, you can't give them their life back. Someone who's getting life in prison, if later proven

to be innocent, can be released.

And we would be assured by the sponsor -- and the sponsor I have the utmost respect for -- that, oh, those instances where people are wrongly convicted are minuscule. And frankly, I believed that then. We all believed that then. While we all acknowledge that our criminal justice system, which we think is probably the best, certainly better than anything else that's been created to give decisions of guilt, innocence and so on -- it is the best, but we all acknowledge it's a human system and it's fallible and it can make mistakes. But we all believed, those who were against the death penalty and its supporters, of, oh, the possibility of a wrongful conviction was so slight. Yes, it happens, but it's a rare instance; certainly a risk worth taking to protect the public at large.

But what have we learned since then? Ah, DNA. I won't say there wasn't DNA then. Hell, there was DNA from back to the apes and before. But DNA was a term in our biology textbooks. Nobody had been able to measure it, use -- computers to compare

strands of DNA hadn't been built.

What happened once that was accomplished? In those cases where there was physical evidence -- and not just murder cases, but other sorts of cases -- we have found a shockingly high number of instances of the criminal justice system convicting innocent persons. And thankfully, in those cases that weren't capital cases, we had the ability to release the person. And indeed, I'm sure the states involved compensated those persons too for their wrongful conviction.

You know, why is it, why is it there's such fallibility in our system? Well, I did make this argument years ago. Under our system of criminal justice, we've all heard the term circumstantial evidence: Oh, there's circumstantial evidence. It's only a circumstantial case. And, yes, you can be convicted on circumstantial evidence. But our criminal justice system has always said direct evidence is the best evidence.

What is direct evidence? Invariably, direct evidence are eyewitnesses. Yet -- and it's there in the literature. And

I wish we could have hearings and explore this with those who have conducted the surveys and studies. But it's in the literature.

Fifty people in a small auditorium with a stage, told: "In one minute, you're going to witness a crime. Then you will be asked questions about it. Please pay attention." They all focus on the stage. Someone comes out on the stage. Someone else comes out, whacks them over the head, whatever. They pretend to fall. The person runs.

They then quiz the 50 people: Identify the person. Eighty percent of them will pick the wrong person out of a lineup. They just saw it five minutes before. They were told watch, pay attention. Yet they couldn't do it accurately.

Yet we convict people on the eyewitness testimony of persons to a real crime where they weren't prepared for it to happen, it sprang, as it were, out of nowhere, they had all of 30 seconds or 60 seconds to observe. Unlike the people in that audience, they were actually in fear, very often,

themselves of the person waving the gun or the knife, or the armed robber or whatever.

So they're surprised, it takes 30 to 60 seconds, they're in fear themselves. And a month later or two weeks later or two days later in a lineup, they pick a person out and say: That's the person. And we in our criminal justice system allow that that is the strongest, most reliable evidence of guilt.

Read the appellate decisions. They'll find procedural flaws but say: Listen, they couldn't have affected the outcome, there were two eyewitnesses who said whatever-whatever, who picked this person out.

That's why, Madam President and my colleagues, that's why we have such a high rate of wrongful convictions. But we could only prove it once there was this scientific test of DNA that could show, frankly, how shockingly high the rate of wrongful conviction is where you're able to use that kind of evidence.

Now we have the ultimate penalty. We know it's been used against the poorest in our society; historically, always been true.

We know those who are wealthy enough for the best defenses can almost always avoid it even when they qualify for it. And we now know from scientific evidence that our criminal justice system convicts people wrongfully in a much higher rate or percentage than we ever believed was possible. I think we know why, too.

So what do we do? Do we -- are we presented with a death penalty bill? You see, what we're being presented with was this solution that the sponsor offered to us nearly three decades ago for the problem of three decades ago. This was a hot topic in the late '70s and the '80s.

But we're in a new century now, with new problems, new concerns, and, yes, new ability. The very sponsor of this bill has sponsored the use of DNA to capture the guilty, to identify the guilty in other legislation we've done. So are we presented with a bill -- and I'd be against it because of my inherent moral aversion to the death penalty.

But, and I don't want to help the

sponsors, but I don't see a bill here that says, okay, we're only going to use the death penalty where there's indisputable scientific DNA evidence that the person is guilty. We have that ability to be sure. And if someone feels so morally and practically committed to death penalty as just and right, why not at least limit it to those cases where there can be virtually no doubt that the person is the perpetrator of the murder?

Madam President, this bill leaves us back where we were three decades ago, with a system that will convict the innocent over and over and put the burden on the condemned to then surmount all the procedural barriers to get a hearing, new trial, whatever and be exonerated.

I say no to this. I don't understand why we didn't take this opportunity to do what was done 30 or 40 years ago, what was done 40-some years ago before they repealed the death penalty. And that is hold hearings, hear from the experts, yes, hear from victims, hear from psychologists on both sides. I'm sure there is evidence about why

the final penalty, the death penalty, may, for victims or their families, be of consolation. There may be some evidence it's a deterrent. I seriously doubt it. But let's hear all the evidence is. And let's hear about what we can do to ensure, particularly when the penalty is a final, irrevocable penalty, that we got the guilty people.

Illinois, look at the experience there. It was shocking. It wasn't shocking that the governor commuted the sentences; it was shocking that in the cases that were looked at there was such a high rate of wrongfully convicted people sitting on death row.

But a process -- it's time. It's decades since we've had hearings on this. And frankly, it's nearly a decade since we had a death penalty on the bill. No one was ever executed under that death penalty. It's very, very hard for anybody to convince me or anyone else that look, see, crime is down because we adopted the death penalty.

Crime is down because we have better policing. Crime is down because we

have longer sentencing for certain crimes that keep people in who otherwise would be recidivists. And crime is down because if you look at your population trends, we hit a decade where the number of males in the population between the ages of 15 and 25 took a big dip. And if you look at your statistics, that's who commits most of the violent crime, that demographic group, young males. Not older males, not women in any age demographic. It's young males, unfortunately, who are committing the crime.

We've, in our state's population, had a big dip in the number of people who fit into that category. That's why crime is down. Better policing. Certainly I do believe that eight years of a great economy helped keep crime down from 1992 through 2000. And the other factors certainly being the population dip and the policing.

So let's hear the evidence. I'd like to know what the evidence about conditions today is, not three decades ago. I want to address the problems of today and tomorrow, not three decades ago. This bill

patches up a supposed solution to problems of two and three decades ago.

I'm against it. I'm voting no. I urge my colleagues to vote no.

ACTING PRESIDENT McGEE: Any other member wishing to speak on the bill?

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Senator Smith, to explain your vote.

SENATOR ADA SMITH: In the past, I have voted against the death penalty, and I will continue to do so. And in all of the literature that we have received, is one quote that is very poignant, and that is made by David Kaczynski, the executive director of New Yorkers Against the Death Penalty, when he states that at least 114 innocent people have been sentenced to death in the United States: "New York's law is full of disparities and is inequitable in its application."

I nor my colleagues will want to be responsible for any one person being put to death that was innocent. Therefore, I vote

no.

ACTING PRESIDENT McGEE: Call the roll.

SENATOR VOLKER: To explain my vote.

ACTING PRESIDENT McGEE: Senator Volker, to explain his vote, I'm sorry.

SENATOR VOLKER: You know, I -- since this is not the final chapter of this bill, I will not respond.

But I just have to quickly say to you, Marty, please. I mean, this business of 114 innocent people and all those people in Illinois. As a good friend of mine who's a DA said, there's a hell of a lot of murderers walking around the streets of Illinois.

You know, of the 11 people that were -- it's what, 11 people who were supposedly exonerated because of DNA, there was a lot of other evidence. You know about double killers? You know about two people and they use DNA, they use evidence on one, it turns out to be with the other one? There's an awful lot of strange things going on in Illinois.

And I can tell you, there's going to be a study someday -- because nobody does studies of pro-death penalty, they only do them on anti. But let me tell you, in New York there is not one case in the history of this state -- and I challenge professors who went out and you should have seen the cases they found that shows that an innocent person was executed. And I've heard all these stories and all that -- no, we're explaining our votes. I know about the book you're going to tell me about. Yeah, I know. But it was baloney. And there's a reason for it, and I understand it. Not his, by the way; there's another guy.

But my point is this. The murder rate in this state is down again, just as it was after -- when we restored the death penalty years ago, it went down. Then we got rid of it, and the murder rate shot up, particularly in New York City. Now it has gone down. Somebody said we spent $170 million. A lot of that money was spent defending people. We have the best defense counsels in the country here in New York.

Nobody spends as much money as we do, because I want to make sure nobody gets executed improperly either.

And we have people, more people that have pled guilty to life without parole and 80 years to life -- why did they do that? Because they were petrified of the death penalty. We have saved hundreds of millions of dollars in trials because of the fact that we had a death penalty out there that made people plead to life without parole and huge sentences.

I vote aye.

ACTING PRESIDENT McGEE: Senator Duane, to explain his vote.

SENATOR DUANE: Some would like to believe that we are a civilized society. We are not. The death penalty is morally wrong. I vote no.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

To explain my vote.

ACTING PRESIDENT McGEE: Senator

Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: I know feelings are strong about this issue and tempers run high. But I think that the evidence presented is consistent and really unrebutted in one critical respect. And I would urge that, as we continue this debate -- because this debate will continue -- the respected sponsor to view the evidence objectively.

There is no correlation from state to state or from country to country between the death penalty and a reduction in crime. It's never been demonstrated. I realize that, you know, we can say it, but it doesn't make it true.

And I think those of us who actually have spent time working in prisons and spent time with prisoners know, frankly, the notion that the most violent criminals that we're most afraid of are deterred by the death penalty is absurd. It's just absurd. You know.

And if you spent time with the people that you purport to be most concerned

about -- you know, if you wanted to make an argument that you could eliminate securities fraud if you had the death penalty for securities fraud, that's an argument. I would be opposed to it, but at least that's a group of people you could deter. We'll have the cleanest markets in the world. But the people you're concerned about for violent crime are not deterred.

And, finally, I don't think it's an argument for the death penalty that people are so petrified of it that they give up their right to go to trial because they're afraid that if they lose they may be executed. There may be some innocent people who are giving up their right to trial because they're afraid of that.

So I'm going to vote no. I'd urge everyone to vote no. And as we continue this debate, let's try and stay objective about it. I think the facts are on the side of those who favor a moratorium.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 36. Nays, 22.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR MONTGOMERY: Point of order. Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Point of --

SENATOR MONTGOMERY: I didn't hear him say who voted no.

SENATOR SCHNEIDERMAN: Point of order. Please announce the no votes.

SENATOR MONTGOMERY: Announce the no votes, please.

ACTING PRESIDENT McGEE: The Secretary will announce the no votes.

THE SECRETARY: Those recorded in the negative on Calendar Number 1936 are Senators Andrews, Breslin, Brown, Connor, Diaz, Dilán, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Mendez, Montgomery, Oppenheimer, Parker, Paterson,

Sabini, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Madam President, could we call up Calendar Number 1929.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1929, Senator Balboni moves to discharge, from the Committee on Rules, Assembly Bill Number 11787 and substitute it for the identical Senate Bill Number 7717, Third Reading Calendar 1929.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Move the substitution.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1929, by the Assembly Committee on Rules, Assembly Print Number 11787, an act to amend a

chapter of the Laws of 2004 relating to creating the New York State Veterans' Cemetery Siting Committee.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Could we now take up Calendar Number 1926.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1926, Senator Golden moves to discharge, from the Committee on Rules, Assembly Bill Number 11788 and substitute it for the identical Senate Bill Number 7709, Third Reading Calendar 1926.

ACTING PRESIDENT McGEE:

Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1926, by the Assembly Committee on Rules, Assembly Print Number 11788, an act to amend the Real Property Tax Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Madam President, could we call up Calendar Number 1927.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1927, by Senator Flanagan, Senate Print 7713A,

an act to amend the Executive Law and the Criminal Procedure Law.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Madam President, is there a message at the desk?

ACTING PRESIDENT McGEE: There is a message at the desk.

SENATOR HANNON: Move to accept the message, please.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

SENATOR HANNON: Madam President,

would we be able to take up Calendar Number 1933.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1933, by Senator Robach, Senate Print 7729, an act to amend the General Obligations Law.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Is there a message on that bill, Madam President?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR HANNON: Move to accept the message.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read the last

section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Madam President, could we now return to the order of motions and resolutions.

ACTING PRESIDENT McGEE: Motions and resolutions.

SENATOR HANNON: I'd like to call up Senate Print 7704.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1925, by Senator Skelos, Senate Print 7704, an act to amend the Arts and Cultural Affairs Law.

SENATOR HANNON: Madam President,

I move to reconsider the vote by which this bill was passed and ask that the bill be restored to third reading.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR HANNON: Madam President, I now move to discharge, from the Committee on Rules, Assembly Print Number 11784A and substitute it for the identical bill.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Hannon.

SENATOR HANNON: Can we now read that bill.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1925, by the Assembly Committee on Rules, Assembly Print Number 11784A, an act to amend the Arts and Cultural Affairs Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Could we now call up Senate Bill 7694A, recalled from the Assembly.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1924, by the Senate Committee on Rules, Senate Print Number 7694A, an act to authorize the City of Elmira.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Move to reconsider the vote by which this bill was passed and ask that the bill be restored to third reading.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: I would now move to discharge, from the Committee on Rules, Assembly Print Number 11781A and substitute it for the identical bill.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1924, by the Assembly Committee on Rules, Assembly Print Number 11781A, an act to authorize the City of Elmira.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Madam President, may we stand at ease for the moment.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:52 p.m.)

(Whereupon, the Senate reconvened at 5:04 p.m.)

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Madam President, would you be able to call up Calendar Number 1927.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1927, by Senator Flanagan, Senate Print 7713A, an act to amend the Executive Law and the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Flanagan, an explanation has been requested by Senator Eric Schneiderman.

SENATOR FLANAGAN: Thank you, Madam President.

This bill basically started last year with Assemblyman Morelle, through the efforts of the Association of Counties. We tried to do some work with the probation people with our colleagues in the Assembly. We were unable to reach an agreement last year. This has been part of the budget process but in some respects has been pulled out now to what in many respects was the original bill that we had discussed.

I would respectfully suggest a couple of different things that this bill does. It expands opportunities for our localities, in particular our counties, to impose certain fees for drug testing, electronic monitoring, and for administrative fees. There are caps on those fees. There are hardship provisions in case of a person's inability to pay.

This has been done in consultation

with probation personnel. This is supported by the counties. This would provide some form of tax relief to our counties for the cost of administering these programs.

And I would also add that this really started as a result of one of the counties in the State of New York going to the Attorney General inquiring as to whether or not these programs were legal, because there were a number of counties who were actually doing them. The Attorney General came back and said: No, you don't have the authority to do this. I believe you should have the authority to do this. The Legislature should move to correct it.

So this would codify the actions of some of our municipalities throughout the state. The Attorney General's office has offered an opinion on that subject, believes that this should be done. And again, it's supported by the Association of Counties.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, as I wipe the tears from my eyes.

I would like to ask if Senator Flanagan, through you, would yield for a question.

ACTING PRESIDENT McGEE: Senator Flanagan, will you yield?

SENATOR FLANAGAN: Sure.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator Flanagan, I see that your bill would allow the localities to charge up to $30 per month per probationer for the cost of their drug test, not to exceed $600 per year. Is that correct?

SENATOR FLANAGAN: No, that is incorrect.

SENATOR MONTGOMERY: Which part did I get wrong?

SENATOR FLANAGAN: The part that you reference in relation to drug testing is not to up to $30 a month, it's up to $8 per test. The $30 per month is related to the administrative fee that may be charged for probation in general.

I would offer to Senator Montgomery too that these types of provisions exist right

now in relation to DWI cases, for an administrative fee to be imposed. This is an extension beyond that.

SENATOR MONTGOMERY: Okay. Thank you.

Madam President, if Senator Flanagan would continue to yield.

ACTING PRESIDENT McGEE: Senator Flanagan, will you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: Okay. Thank you, Senator.

So the correction that I should note is that it's $30 for administrative fees -- an administrative fee, and additionally $8 per test. And the fees for the drug testing is not to exceed $600?

SENATOR FLANAGAN: Correct.

SENATOR MONTGOMERY: And the administrative fee of $30 per month is $360, is that correct, per year?

SENATOR FLANAGAN: Yes.

Senator Duane is obviously coming

to your aid here to help wipe away the tears.

SENATOR MONTGOMERY: Because I'm just about to cry.

All right. So in addition to that, am I correct in reading that it also imposes a fee of $8 per day for electronic monitoring, not to exceed $900 per probationer per year? Is that correct?

SENATOR FLANAGAN: Yes.

Well, let me make one clarification. This is at local option. So it does not mandate that this be done; it provides our counties with the option of doing so if they choose.

SENATOR MONTGOMERY: All right. If Senator Flanagan would continue to yield, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: Yes, thank you.

Senator Flanagan, is there anything in your bill -- or should I ask, what is the penalty for people who are unable to meet the requirements of $30 per month and/or $8 per

test and $8 per day for their electronic monitoring?

SENATOR FLANAGAN: Well, anyone -- the probationer has an opportunity to petition. First of all, they have to be properly notified. They have to be told what the fee is, they have to be given it in writing, and they do have to be given the opportunity to come in and suggest that that would create an undue hardship based on their ability to pay. So they certainly can make an attempt to have any of these fees waived.

I would suggest, although I can't say with a hundred percent clarity, that if one were to violate any of these fees, the person would be subject to the same penalties or issues that they would face under existing law. A violation of probation I'm sure at some point could end you back up in court before a judge.

SENATOR MONTGOMERY: Madam President, through you, would Senator Flanagan continue to yield.

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT McGEE: The

Senator continues to yield.

SENATOR MONTGOMERY: So, Senator Flanagan, is it possible that depending on the provisions of your probation, you could theoretically -- if you're unable to pay, that becomes a problem and the locality decides that you have violated your probation, you then go back to court to be remanded once again based on violation of your probation? Is that the case? Is that a possibility?

SENATOR FLANAGAN: I would suggest that you're taking a leap of faith. It may not necessarily be the case. Simply because somebody goes back to court doesn't necessarily mean that they're going to be remanded.

SENATOR MONTGOMERY: But if you violate probation, it's very possible that you can be.

Madam President, if Senator Flanagan would continue to yield.

ACTING PRESIDENT McGEE: I'm sure the Senator would continue to yield.

SENATOR FLANAGAN: Yes.

SENATOR MONTGOMERY: Thank you.

One last question, Senator Flanagan. In the event that a person is unable to pay because they are on some sort of public assistance -- maybe Social Security, I don't know -- does this money come directly out of their Social Security check or whatever their assistance might be? Is that your intent?

How will it -- if -- assuming that maybe they're working, maybe they don't earn enough, is there any limit in terms of an income that is required in order for you to get this money from them? Or it doesn't matter how little they make, they still pay? Is there any graduating fee?

How do you determine what percent of this gets paid over what a person's income is? Is there any income standard attached to this fee?

SENATOR FLANAGAN: I believe it's a sliding scale based on federal poverty guidelines. It's certainly not -- it wouldn't be my intent -- I'm not going to tell you that I know exactly with 100 percent clarity what existing law is. It's certainly, I don't

think, our intention to suggest if you can't pay this fee, they're going to take away your food money. And I don't think people on probation are looking to do that.

I mean, there's a specific provision that allows somebody to come in and say, here's my situation. And I would like to believe -- and I can certainly check. I don't want to just say yes to you and be wrong. I will check.

SENATOR MONTGOMERY: All right. Thank you. Thank you, Senator Flanagan.

Madam President, on the bill briefly.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. Madam President, this obviously is a bill that Senator Flanagan says he intends for it to be revenue enhancement for the localities, a tax, if you will, that will be paid specifically by those people who are on probation.

Now, my assumption is if the rest of the state is anything like where I represent, a large number of those

probationers are also young people. So this is essentially going to be a tax that falls very heavily on young people.

And we just -- I did an amendment yesterday to -- just to raise $10 million to provide for employment, summer youth employment. And then, of course, that was voted down. And while we don't want to support youth employment in our state, we do want to institute a program which really will heavily tax young people over and above what they already -- the burden that they already have to bear in terms of not having access to employment, not having other opportunities and so on and so forth.

This really is, I think, a bill that does not have a lot of thought. Certainly it doesn't reflect any compassion. It doesn't reflect an interest in supporting -- moving people away from probation, supporting the fact that we don't want them to go further into the criminal justice system so we would like to give more incentive, as opposed to punishing people and essentially creating a form of entrapment so

that they will permanently remain poverty-stricken and more inclined not to break the cycle of crime in society.

So I think this is a very bad bill. And in fact, I'm not sure, I can't figure how much revenue is going to be raised based on this bill. Because if we're talking about poor people, I can't imagine a lot of these people have a lot of money. I can't imagine that you're in fact going to collect anywhere near twelve, fifteen, $2,000 a year from this group of people. So what is it going to merit?

And by the time we spend the additional money bringing them back to court, perhaps further incarcerating them and so forth and so on, we will lose any sense of what the bill is purported to do, and that's to raise revenue.

So I'm going to vote no, and I hope that my colleagues will join me in rejecting this idea because it's very bad for our communities, it doesn't help us in any way. I don't believe it's going to be revenue-producing. And in fact, it goes

against whatever we've tried to do in terms of reforming the criminal justice system. This is the exact opposite.

So I vote no.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you.

Senator Montgomery, now the tears are in my own eyes. You cut me to the quick suggesting that this bill has not undergone a lot of thought.

I wanted to clarify two things. On page 3 of the bill, Section 7, lines 32 through 45, they speak to 200 percent of the federal poverty level. It speaks to regulations being created that would look for indicia of one's ability to pay. I don't

believe that there's any goal here to simply go after someone who doesn't have a lot of money. Quite the contrary.

And I would also just add that this bill has been negotiated with the Assembly, with Assemblyman Morelle. Some concerns that I know Assemblyman Aubry in particular had last year in relation to this issue I hope and I do believe have been addressed. And I'm comfortable that a great deal of thought went into this bill and that it is the right thing to do.

Thank you.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1927 are Senators Breslin, Connor, Duane, González, Hassell-Thompson, L. Krueger, Onorato, Parker, Paterson, Schneiderman, A. Smith and M. Smith. Also Senator Stavisky. Also Senator Sabini. Also Senator Montgomery. Ayes, 44. Nays, 15.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hannon.

SENATOR HANNON: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

We'll stand at ease awaiting the report of the Finance Committee.

ACTING PRESIDENT McGEE: Immediate meeting of the Finance Committee in the Majority Conference Room.

The Senate will stand at ease awaiting the report of the Finance Committee.

(Whereupon, the Senate stood at ease at 5:20 p.m.)

(Whereupon, the Senate reconvened at 5:32 p.m.)

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, can we please call up Senate Calendar 1344.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1344, by Senator Kuhl, Senate Print 6473B, an act authorizing the City of Corning.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR BALBONI: I move that we accept the message.

ACTING PRESIDENT McGEE: All those in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

There is a home-rule message at the desk.

The Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Could we please take up Calendar Number 1937.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1937, by Senator Hannon, Senate Print 7733, an act to amend the Public Health Law, in relation to the fee-for-service continuing care retirement communities.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR BALBONI: I would move to accept the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity.

All those in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

THE SECRETARY: Section 13. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. If we could return to the reports of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it be read.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bills:

Senate Print 6051A, Senate Budget Bill, an act making appropriations for the support of government: Legislature and Judiciary Budget;

6054B, Budget Bill, an act making appropriations for the support of government: Health and Mental Hygiene Budget;

6055B, Budget Bill, an act making appropriations for the support of government;

6058B, Budget Bill, an act to amend the State Finance Law;

6059B, Budget Bill, an act to authorize the Dormitory Authority;

And Senate Print 6060B, Budget Bill, an act to amend Chapter 101 of the Laws of 2004.

ACTING PRESIDENT McGEE: All bills ordered direct to third reading.

Senator Balboni.

SENATOR BALBONI: Madam President, at this time I'd like to announce

an immediate Majority conference in the Majority Conference Room, with the expectation that we will return sometime approximately 6:30 p.m.

ACTING PRESIDENT McGEE: Without objection, all bills are ordered directly to third reading.

There is presently a call for the Senate Majority Conference in the Senate Majority Conference Room.

The Senate will return at 6:30 p.m.

SENATOR BALBONI: Please recognize Senator González.

ACTING PRESIDENT McGEE: Senator González.

SENATOR GONZALEZ: Yes, Madam President. There will be an immediate meeting of the Minority Conference in Room 314.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Minority Conference in Room 314.

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 5:35 p.m.)

(Whereupon, the Senate reconvened

at 6:52 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, I believe the calendar is being distributed right now. And if we could take up Supplemental Calendar Number 64A.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1940.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1940, Senate Budget Bill, Senate Print 6055B, an act making appropriations for the support of government: Transportation, Economic Development and Environmental Conservation Budget.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: Yes, there is a message of necessity at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity at the desk. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Skelos, an explanation has been requested.

Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is a bill that has been negotiated with the Assembly that relates to a series of areas including the Agriculture Department, the Adirondack Park Agency, Department of Housing, Division of Lottery, Motor Vehicles, Public Service Commission, and provides various

funding for the agencies and for affiliated programs that are connected with the agencies.

As was said, this bill has been agreed with the Assembly, and we expect that the Assembly will pass this bill either later on tonight or tomorrow.

Questions?

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. Briefly on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

Senator, would you -- just one moment.

SENATOR LIZ KRUEGER: Certainly.

ACTING PRESIDENT McGEE: You may proceed.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Well, again, we are now dealing with a new group of budget bills for tonight. Or I assume we are, starting with this one. I just, for the record, want to point out that this is a bill that we've received a message

of necessity on from the Governor, it is not a bill that has aged for three days.

And in fact, I carry a bill that says that we should allow budget bills to age for ten days, given how complicated they are and how much they impact the State of New York.

And I suppose we could argue that nothing impacts from a broad base the State of New York more widely than decisions about transportation, economic development -- which, as we know, is an enormous portion of the state budget -- and environmental conservation.

So I object to the fact that this is a bill that has not aged for three days. There's been no public discussion, there's been no opportunity for anyone to really evaluate what is or is not in this bill.

Having said that, and while I will be voting against it on those grounds and the fact that there's so many other questions to be asked, I will say that I am very pleased to see that there is $57 million of new money for housing capital spending in this budget. It's

the first time we've seen any new money in the state budget to expand affordable housing through capital funds for an extended period of time. And that certainly, I believe, is something very important to the State of New York.

However, we still don't address so many of the issues, particularly when it involves the MTA and the absence of money for the MTA and the absence of funds that are desperately needed for mass transit and public transit in the State of New York.

It raises more questions than it answers about how we spend economic development money, both on budget and through off-budget authorities and through the Urban Development Corporation.

I would hope that my colleagues would agree with me that one should have more time to evaluate such a complex set of proposals, the pluses and minuses of such, and what's not there. And I will be voting against the bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank

you.

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, Madam President, I believe there's an amendment at the desk. I ask that the reading of the amendment be waived, and I ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may speak on the amendment.

SENATOR MALCOLM SMITH: Thank you, Madam President.

This amendment is asking for $10 million to be added for an Indian Point decommission feasibility study, for a study by the Public Service Commission to establish a safe and environmentally viable alternative energy source to enable the orderly decommission of the Indian Point nuclear power plant.

The amendment further requires that the Public Service Commission, in cooperation with the Department of Labor, is further directed to develop a program to fund appropriate job-retaining programs to ensure

stability and continuity among the local workforce.

And I urge a yes vote on this amendment from all my colleagues, specifically my good friend over here, Senator Marcellino his handsome self.

SENATOR MARCELLINO: Thank you, Senator.

ACTING PRESIDENT McGEE: All those in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Duane, González, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is not agreed to.

Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Just very briefly.

Senator Krueger referred to several problems with this proposed bill that's

supposed to address issues of transportation. I would urge all of my colleagues that with this bill we're digging ourselves deeper into a hole that is going to be very hard to get out of. This bill provides not one dollar of capital support for the MTA.

We have gone through a period in the 1970s where the greatest transit system in the world was in decline. Through a bipartisan commitment to capital, through the work of many talented administrators through several administrations in City Hall and in the Capitol, we've rebuilt the MTA into a great system again. Over the last ten years, we have moved in the opposite direction.

We have to deal with this. We're now raising fares, we're facing cutbacks, the agency is in debt. We should not be passing a budget that neglects our primary responsibility to the businesses of New York, much less the people, put aside the personal costs. This is the most antibusiness move you can make as a legislature to defund the transit system on which all of our downstate businesses rely in the city and suburbs.

I will be voting no for that reason alone, among the others that have been referred to.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1940 are Senators Duane, L. Krueger, Sabini, Schneiderman, and A. Smith. Also Senator Diaz. Ayes, 53. Nays, 6.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, there will be an immediate meeting of the Judiciary Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Judiciary Committee

in the Majority Conference Room.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, at this time can we take up Calendar Number 1942.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1942, Senate Budget Bill, Senate Print 6059B, an act to authorize the Dormitory Authority.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk, Madam President?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR MARCELLINO: Move that we adopt the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed will say nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message of necessity is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: Madam President, I would defer to the esteemed legislator Senator Volker for an explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is the language bill on transportation, economic development and environmental conservation.

As I pointed out yesterday, since we were -- the constitution was changed by the courts some years ago, we now have to pass two bills for one. And this bill follows up on the previous bill, which dealt with the actual funding. And this is the language that goes along with the funding in the Article VII bills.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. I have an amendment at the desk. I'd like to waive reading and ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR LIZ KRUEGER: Thank you, Madam President.

So as I mentioned in my earlier statement, I was very pleased to see that we put $57 million in for capital in the previous bill for capital for new affordable housing. But if we don't move forward to do something about the loss of Mitchell-Lama housing throughout the State of New York, anything that that $57 million in new money would buy us would pale in comparison to the loss of housing we are anticipating because we have still not passed this Mitchell-Lama buyout prevention bill that has been asked for by the City of New York and by the Mayor.

SENATOR MARCELLINO: Madam

President, if the Senator would indulge me.

SENATOR LIZ KRUEGER: Certainly.

SENATOR MARCELLINO: There was previously a call for members of the Judiciary Committee to report to the Majority Conference Room. If they would do so, that committee can meet as quickly as possible and do their business.

So again, would the members of the Judiciary Committee please report to the Majority Conference Room so that a meeting can be held. And we'd appreciate that.

ACTING PRESIDENT McGEE: Will all members of the Judiciary Committee report to the Majority Conference Room immediately.

Senator Krueger.

SENATOR LIZ KRUEGER: Certainly, Senator Marcellino.

Thank you, Madam President. Our amendment would amend the Private Housing Finance Law by authorizing municipally aided Mitchell-Lama rental developments in New York City to pay dividends or interest in excess of 6 percent with the approval of the city's Department of Housing Preservation and

Development. Such developments would then remain in the Mitchell-Lama program, and their rents would be subject to annual increase by the -- established by the New York City Rent Guidelines Board.

This bill would also provide rent stabilization protection for tenants and real property tax relief for owners of Mitchell-Lamas where post-1974 Mitchell-Lama rental developments voluntarily dissolve on or after the effective date. Under the Private Housing Finance Law, Section 35, Mitchell-Lama housing companies may voluntarily dissolve or buy out after 20 years. Many housing companies are opting to buy out in order to increase their return on their investment because we have not passed this law.

This proposed language is designed to encourage housing companies to remain in the Mitchell-Lama program by authorizing returns in excess of the current statutory limit.

To highlight how important this is, let me just reference that there are 66,997 Mitchell-Lama cooperative and 57,994

Mitchell-Lama rental units in limited dividend housing remaining in New York City. There are 35,995 units of Mitchell-Lama limited dividend rental housing that will be able to charge market rents upon leaving their respective programs if we don't pass this bill and give ourselves some alternatives.

Since the inception of the program, more than 24,000 units of housing are no longer regulated under the Mitchell-Lama programs. We've already lost those units because of the failure of the Legislature to move. It is anticipated that by the year 2015, a minimum of 59 additional Mitchell-Lama developments, representing more than 40,000 units of affordable housing, are scheduled to retire from their subsidized mortgages, removing a last significant hurdle to their leaving the Mitchell-Lama program.

We are so many years too late in not passing protections for Mitchell-Lama tenants to assure the continuation of affordable housing in the City of New York. I urge us not to allow another year to go by without passing legislation such as this, the

Mitchell-Lama buyout prevention bill. It is at the request of the City of New York. It is urged that we pass this by the Mayor. It would have its impact on the City of New York. I hope that my colleagues will join me in supporting this amendment.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson, on the amendment.

SENATOR HASSELL-THOMPSON: Thank you. Very briefly.

This house, as well as the Assembly, has just passed a bill that would allow major repairs and redevelopment of the Co-op City Mitchell-Lama, which is in my district, which represents 15,000 units of affordable housing.

I cannot tell you the struggle that we had for several months prior to this bill with attempts to privatize. And even now, there are rumors that even after this money is being made available that there will continue to be attempts to privatize these units.

This language is very critical. And it was very interesting that this language

became available, because just two days ago Senator Liz Krueger and I were having a discussion from the Housing Committee on the necessity for us to monitor so carefully how this money is spent and to ensure that the state gets the appropriate investment but, more than that, the constituents who need affordable units, they will always be made available to them.

I support this amendment, having gone through the last 2½ years of a serious struggle with the largest single Mitchell-Lama in the country. And still those attempts are being made to privatize.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I also rise to speak in support of the amendment.

I think that we have to be very, very careful in this house about continuing the policy that has been in effect for the last ten years or so of reducing our investments in critical needs for the working men and women who make our state run.

I spoke earlier about the fact that we have systematically defunded the greatest transit system in the world. But it's also important for us to recognize that we do not have an effective, affordable housing program in this state.

And when you look back at a program like the Mitchell-Lama program, it really reminds us of the great things that used to be done in this state for working men and women. It reminds us that New York State led the country in the development of labor laws to protect working men and women, healthcare programs, of building housing. Our public housing system was an absolute gem. The Mitchell-Lama program, a great way to leverage government resources, working with the private sector to provide affordable housing.

Somewhere over the course of the last twenty years we've gotten off track. And our state now is lagging the nation we used to lead in passing laws to make ordinary working men and women's lives better.

It's time for us to renew that commitment, which was, again, a bipartisan

effort, on behalf of governors from Al Smith on, to really make this state the best state to live in and work in. People wanted to move here, people wanted to live here, people wanted to raise their children here. And the Mitchell-Lama program is the last major affordable housing program that we passed in this state. And how many years ago was that?

We are not living up to our responsibilities. We are not living up to our responsibilities to house our citizens, to make sure they can afford to live here, to provide them with decent schools -- and we've discussed that at great length -- to provide an affordable mass transit system so they can get to and from work.

And that has got to stop. Because if you don't invest in your human infrastructure, you cannot have a successful economy, you cannot have a successful state.

So I would urge all of you that as with schools, as with transit, this is not a matter of charity, this is a matter of essential investment for the long-term economic health of our state as well as a part

of our moral responsibility to our citizens.

I would urge everyone to vote in favor of the amendment. Thank you.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Connor, Diaz, Duane, González, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky. Also Senator Brown.

ACTING PRESIDENT McGEE: The amendment is not agreed to.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1942 are Senators Duane, L. Krueger, Parker, Sabini,

Schneiderman, and A. Smith. Ayes, 53. Nays, 6.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can you recognize Senator Diaz, please.

ACTING PRESIDENT McGEE: Senator Diaz.

SENATOR DIAZ: Yes, thank you, Madam President. I request unanimous consent to be recorded with a yes vote on Calendar 1940.

ACTING PRESIDENT McGEE: You wish to be recorded in the negative?

SENATOR DIAZ: In the positive.

ACTING PRESIDENT McGEE: In the positive.

SENATOR DIAZ: 1940.

ACTING PRESIDENT McGEE: Without objection.

SENATOR DIAZ: Thank you.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we now call up Calendar Number 1939.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1939, Senate Budget Bill, Senate Print 6054B, an act making appropriations for the support of government: Health and Mental Hygiene Budget.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR MARCELLINO: Move to accept the message of necessity.

ACTING PRESIDENT McGEE: All those in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has -- I'm sorry, Senator Hannon, an explanation has been requested.

SENATOR VOLKER: Madam President, could I defer to Senator Hannon to explain the bill.

ACTING PRESIDENT McGEE: Senator Hannon, an explanation has been requested.

SENATOR HANNON: This bill deals with public health, Medicaid, HCRA, in regard to the health budget for the State of New York.

The highlights of this, because of the vastness of the appropriations in regard to ensuring that we have good health for our citizens, I'll just address some of the specific highlights that the Legislature has focused on.

I think primary among them all is

the state takeover of the Family Health Plus system in order to provide local relief for our localities. And the initial cost of this for the fiscal year will be $25 million, and thereafter rising sharply.

This was one of the two main goals in regard to our Medicaid Task Force, the other being to make the rest of the Medicaid system more rational and more efficient, for a better delivery of health to our citizens.

Along with that, what we have provided for is an enhancement of the tax credit for long-term-care insurance so that we will focus the purchase of that insurance by those who need it, less reliance on the Medicaid system, and have the baby boomer generation be able to support its own aging process.

Along with that, we have focused the instance of Senator Rath and Senator Golden on the point of access, the promotion of information about long-term-care insurance, working through the Office of Aging throughout the state, as well as the Health Department.

Some other significant aspects of

this bill have been to reject the "sick tax," the proposal by the Executive in regard to monies that would be imposed upon hospitals and nursing homes throughout the state.

Is that sufficient, Madam President?

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Senator Meier.

SENATOR MEIER: Thank you, Madam President. Just very briefly on the bill.

The Medicaid portions of this bill are really the beginning of a process. This is by no means the end of the process. There are some important measures in here. This is the first attempt at significant fiscal relief for local governments. That effort started in this house when the Majority Leader appointed the Medicaid Reform Task Force. And that was a bipartisan effort where people reached across this aisle and worked together on that effort.

As Senator Hannon explained, there are some other measures in here. One of the things that we're going to have to revisit

next year, and perhaps the year after and the year after, is this entire issue of cost containment. There is no more daunting challenge fiscally to this state or to the municipalities that compose the rest of this state than this Medicaid program. And there should be no mistake about this debate, that the other house wasn't interested in engaging us on cost containment.

And some of this is pretty shocking and pretty disappointing, including, in my view, the preposterous and slanderous notion that there's something racist about a preferred drug list when the whole rest of the insured private-sector world operates under that kind of a system, including the preposterous notion that there is somehow something wrong with taking a look at a menu of benefits to see if we can't bring it into line into something that is reasonable and humane but tracks other insurance, that it's available in the private sector.

We need to come back and to take a look as we lay the groundwork to help people find alternatives to disposing of all their

assets -- through access to private capital, through access to insurance -- to provide in part, at least, for their own long-term care. So that when the baby boom generation, my generation, starts hitting this long-term-care system, that we don't collapse both Medicaid and the long-term-care system itself.

We are going to revisit Medicaid cost-containment in this Legislature in coming years for one of two reasons. We will revisit Medicaid cost-containment and do more on it because we have come to the conclusion that we must do it, that it's the right thing to do, that there are ways of containing costs and at the very same time to more intelligently and humanely program the way we provide health care in this state and at the same time give a break to taxpayers and give more quality health care to those who rely upon this Medicaid system.

Or we will do it when this state stares over the edge of the cliff into a very black fiscal abyss and do it because we will have no alternative.

And what I would suggest is it

would be far better if we can, when we revisit this, do it before we get to the point of that cliff. Because decisions that we make at the point of crisis tend not to be as well thought out or as well organized, and they tend to be decisions many times that wind up hurting people who are the most vulnerable and the most in need of help.

This is an excellent start. It's an excellent start because the Majority Leader appointed a task force. It's an excellent start because members on both sides of the this aisle worked very cooperatively and voted for a bill that we passed in this house very much earlier in the year.

We need to do more. We have at least started. And I'm going to vote for this bill very gladly.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the explainer would yield for one question.

ACTING PRESIDENT McGEE: I think the explainer is Senator Hannon.

Senator Hannon, will you yield?

SENATOR HANNON: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: Through you, Madam President, just to clarify things in light of Senator Meier's remarks, there is no preferred drug list in this bill or the next bill, is there?

SENATOR HANNON: No. There is -- regretfully, in my view. But there is none. Factually, there is no preferred drug list in this bill.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Any other Senator wish to speak on this bill?

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1939 are Senators Duane, L. Krueger, and A. Smith. Also Senator Stavisky. Also Senator Andrews. Also Senator Schneiderman.

Those recorded in the negative on Calendar Number 1939 are Senators Andrews, Duane, L. Krueger, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 52. Nays, 7.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we call up Calendar 1941.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1941, Senate Budget Bill, Senate Print 6058B, an act to amend the State Finance Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a

message of necessity at the desk, please?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR MARCELLINO: Move to accept the message of necessity.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor of accepting the message will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: I will defer to my esteemed colleague from Long Island, Senator Hannon.

ACTING PRESIDENT McGEE: Senator Hannon, an explanation has been requested.

SENATOR HANNON: Madam President,

this is the Article VII language bill accompanying the appropriation bill that we just passed. It implements, where there is needed, statutory changes to go along with the policy changes we've already appropriated money for.

ACTING PRESIDENT McGEE: Thank you, Senator Hannon.

Senator Breslin.

SENATOR BRESLIN: Madam President, I believe there's an amendment at the desk. I ask that the amendment reading be waived and I be allowed to speak on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR BRESLIN: Thank you, Madam President.

The amendment is an amendment which would cap all Medicaid expenses at the 2003 level. I in fact have a bill that I introduced a couple of years ago that would cap it at the 2001 level.

We have to, as a legislative body,

stop passing down to localities. I applaud Senator Meier and Senator Hannon for their work on the task force, but we also have to collectively get together to make sure we protect the localities.

If you took every state in the union, every state in the union and added up the local costs for Medicaid, the entire local cost for Medicaid, New York State pays 84 percent of all local costs nationally.

Over the last four years, Medicaid costs to the localities have increased by 57 percent. In my own county, the entire property tax, the entire property tax leaves Medicaid $14 million short. This is at the same time when we have 3 million uninsured in New York State.

The health care system is broken. And we have to bring it together to make sure that we allow the localities to reduce its Medicaid cost, have it absorbed by the states, so those localities can go on and create business and do what they're supposed to do and not be so concerned and overburdened with Medicaid.

Therefore, I would request all of my brethren to support this amendment.

Thank you.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment --

SENATOR BRESLIN: My sisters and brothers.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Diaz, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky. Also Senator Connor.

ACTING PRESIDENT McGEE: The amendment is not agreed to.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

ACTING PRESIDENT McGEE: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I think if each of the Senators' districts are like my district, this is probably one of the biggest issues that the localities are concerned about; namely, the cost of Medicaid.

I too want to also say that our bill has been a first step to make it better for the localities. I don't believe just by the state picking up the whole cost of Medicaid or capping the level of the local shares is going to solve the problem. The problem is the runaway cost of the system.

And I would hope that as we continue this discussion, more of the recommendations by the Senate task force be adopted by both houses so we can control the expense not only for the localities but also for the State of New York, because it is running out of control at this point in time.

So I support this first step and hope that we can get more and much more substantial reforms in the days to come.

ACTING PRESIDENT McGEE: Announce the results.

Senator Hannon, I'm sorry.

SENATOR HANNON: To explain my vote, Madam President.

ACTING PRESIDENT McGEE: Senator Hannon, to explain his vote.

SENATOR HANNON: One of the most significant things we did through this is the takeover of Family Health Plus.

And when there were a number of proposals suggested to the task force as to what could be done -- whether the state could take over Medicaid entirely, take over the increase in Medicaid, take over the long-term-care system -- we had a question of how quickly could we get relief to the counties, how quickly could we afford that relief, and how could we make sure that we could be as fair in shifting the burden.

And we made the choice, in consultation with the Association of Counties,

that we would come up with the takeover of Family Health Plus, because we felt that met all the tests. And that's what is implemented in this legislation today.

Thank you.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Yes, to explain my vote.

I too think that this is a good first step, and I commend the members of the Senate that have served on the task force.

I'm disappointed that the amendment to cap Medicaid expenses didn't pass, though, because I think that this first step doesn't go far enough. We've heard members talk about the Medicaid expense and how it is choking local governments all across this state, while in Western New York I know that Erie County and Niagara County governments are really suffering under the weight of the Medicaid burden.

And when you look at the fact that the City of Buffalo is under the authority of a control board and Erie County's fastest

growing expense is Medicaid, I think something has to be done sooner than later. And I wish we had taken the opportunity, I wish we had seized the opportunity to cap Medicaid expenses at the 2003 level.

Thank you.

ACTING PRESIDENT McGEE: Senator Brown, how do you vote?

SENATOR BROWN: I vote yes.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Madam President, briefly to explain my vote.

I'm disappointed that we weren't able to cap the counties' expenses also. And I'm really terribly disappointed that the Assembly would not seriously engage in the cost-containment that's necessary to take that over.

We cannot sustain, within this budget, with the requirements facing us in terms of education and anything else, anything more than we have done today. And that's one of the reasons why I say we need to come back again next year to get some responsible

cost-containment that gets this program under control, makes it more efficient, gives the people the assistance that they need.

And if the Assembly would like to engage in some serious cost-containment, we'll be back here next year giving the counties more relief. But we have to be responsible. We have to have a balanced budget as well. And I say that as a former county executive. And the counties in this state I think do understand that. We can send more help. The Assembly needs to engage on cost-containment.

I vote aye.

ACTING PRESIDENT McGEE: Senator Meier will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1941 are Senators Duane, L. Krueger, Sabini, Schneiderman, and A. Smith. Ayes, 54. Nays, 5.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Stavisky.

SENATOR STAVISKY: Madam

President, if I may have unanimous consent to be recorded in the affirmative on Calendar 1939, Senate Bill 6054B.

ACTING PRESIDENT McGEE: Without objection.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we call up Calendar Number 1943.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1943, Senate Budget Bill, Senate Print 6060B, an act to amend Chapter 101 of the Laws of 2004.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk, Madam President?

ACTING PRESIDENT McGEE: Yes, there is a message of necessity at the desk.

SENATOR MARCELLINO: Move to

accept the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed will say nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message of necessity is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is what we used to call -- now it's not the "Big Ugly," it's the "Big Handsome."

And it's a revenue bill that provides extenders. My colleague to my right is really upset because the extenders of certain things are in this bill, on Quick Draw.

I believe the rebates for New York City are in this bill. And a whole series of

areas including the tax-free week, film tax credit, and a series of other benefits to the taxpayers of this state. The extender, I think, of the Empire Zones is in this bill too, for one year.

ACTING PRESIDENT McGEE: Senator Onorato.

SENATOR ONORATO: Will the sponsor yield to a question, please? Senator Volker.

SENATOR VOLKER: Yes, I will, sir.

SENATOR ONORATO: Senator, I'm concerned with the part of the Empire --

ACTING PRESIDENT McGEE: Just -- Senator Onorato.

Thank you.

SENATOR ONORATO: Thank you, Madam President.

I'm concerned about the Empire State film production credit. According to that, there's going to be a 10 percent credit for production costs for new films and television series that are produced in New York State. Does this apply to the

existing firms or only to new firms coming online?

SENATOR VOLKER: The answer is yes, it does apply to existing firms as well as to new firms.

SENATOR ONORATO: Thank you.

SENATOR VOLKER: You're welcome.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would please yield to a question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Madam President. Thank you.

So this is the revenue bill for the State of New York. How much revenue is in it?

SENATOR VOLKER: Good lord.

SENATOR PADAVAN: A lot. A lot.

(Laughter.)

SENATOR LIZ KRUEGER: I don't

know if Senator Volker wants to defer to Senator Padavan on this one.

SENATOR VOLKER: The net amount in it -- and the reason is that in the bill actually there are some -- because this is a language, Article VII bill, some of the numbers that were in there originally are removed. I think the net is about $670 million.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you.

So this entire bill adds up to 670 million new dollars?

SENATOR VOLKER: I believe it is new dollars, yes. Monies requested by the Governor -- now, the Governor had more than that, and we have included in this bill $670 million -- that's why I said net. It's

additional. But we rejected some of the Governor's requests and added some of our own.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

So today we did a series of other expenditure bills. How much new money do they add up to?

SENATOR VOLKER: I believe it is between a billion-two and a billion-three, depending on how you count. But let's say it was about a billion-two.

SENATOR LIZ KRUEGER: About a billion-two.

Madam President, if you would ask the sponsor if he'd continue to yield, please.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: The

Senator yields.

SENATOR LIZ KRUEGER: Thank you.

So as I understand it, Senator, this revenue bill you say has about 670 million in new revenue, but we've passed bills throughout the day that have actually added between $1.2 and $1.3 billion.

So technically, if I understand this correctly, what we are passing today in expenses versus what we are being asked to pass today in revenue don't balance out? It's not a balanced revenue/expenditure budget?

SENATOR VOLKER: It is the opinion of the Senate and Assembly fiscal people that it does balance out, because there is growth in revenue, estimated growth and so forth.

One of the things about a budget, and I do know a little about a budget, even though I'm not the real chairman of Finance. But when you submit a budget, you submit estimates of what the revenue is going to be and you submit estimates of what the expenditures are going to be.

You know, I -- I give a

for-instance. I know for a fact that there was additional money in the capital gains tax at the end of last year, which we didn't really anticipate because there were bonuses paid on Wall Street, unexpected bonuses at the end of the year. It's been told to me that there may be some additional revenue because we haven't hired hardly anybody in this state in the last year.

So the truth is that the estimates relate to guess -- guesstimates. Remember, this is a $101 billion budget. So it's pretty hard to say this is exactly what it is. In fact, not only is it pretty hard, it's impossible. Because we're guessing what revenue is going to come in versus what's going to go out.

And remember, we are in a late budget. And interesting about late budgets is we don't spend near as much money because we've been spending at a lower level until now. There are some people that allege that we save a lot of money when budgets are late, because the investments and so forth and -- we won't get into that, because the budget people

tell me we don't talk about that.

Sales tax revenues are coming in very strong, it was just told to me. I happen to know that in Western New York sales tax revenues are at a very high rate. And the other thing I happen to know is that the Comptroller just informed me personally that the numbers on Medicaid are finally beginning to go down for the first time since 9/11.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would yield to an additional question.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Senator Volker yields.

SENATOR LIZ KRUEGER: So as I understand it, Senator, we're guesstimating what the revenue will be and, I suppose, the expenditures will be.

I believe you have a revenue table that at least breaks down some of the analysis in the revenue bill of what you project that $670 million is coming from. Could we have -- can we make that available to the members?

SENATOR VOLKER: Yeah, we can

make it available.

But, Senator, every time we do a budget, we are doing, in a sense, a guesstimate. The media sometimes thinks that this is an exact science. What they don't realize is that it can't be an exact science. Because there's no way we can say exactly for sure. We know the economy is getting better, we know the numbers are getting better, we know expenditures are down in some places because we haven't spent as much money. So we do have a book that shows the numbers, but we believe that -- well, the Senate I think believes that the numbers are actually -- our expenditure numbers are actually down from what we projected and that our revenues are up.

SENATOR LIZ KRUEGER: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: I appreciate Senator Volker's candor with me in answering my questions. This is a bill that we got tonight with a message of necessity

from the Governor. It's the revenue bill. It's the bill I have argued all week we should have started with, rather than starting with expenditure bills.

Having said that, now that we have it -- although we still haven't seen any of the details, just some language -- we're being told that New York State guesses what our budget will be. We guess about our revenue, we guess about expenditures. And he's right, there's no hard, perfect science. Budgets are fiscal plans. They are projections for the year. I suppose an irony, and the Senator pointed out, is we are starting this so late in the year.

But I would argue this is exactly why New York State ought to be following GAAP procedures, Generally Accepted Accounting Procedures, for government. I think it should be disturbing to the people of New York, as it is disturbing to me, that we don't have any rules for our budget. We clearly don't have a rule about when we pass the budget. And we also don't have any rules about what goes into the budget.

We're guessing. We're guessing even the night we pass the budget. We're guessing what the revenue might be without any numbers in front of us, just a language bill we've just received. We're guessing, or I suppose we're hoping that the expenditures and the revenue somehow match somehow, almost perhaps by magic, rather than by accounting procedures.

But we do know what we have failed to do. One, we have failed to be able to show and say to the people of New York that we have a balanced budget or that we've got a balanced set of revenue and expenditure documents in front of us that we're passing today, because we admit we're just guessing on where everything might be.

Senator Volker referenced sales tax is stronger than projected. Well, perhaps one of the reasons sales tax is stronger than projected in Western New York or anywhere else is originally we had promised the people of New York that we would end the sales tax on clothing and footwear priced below $110, and yet we failed to meet that promise.

So I'm not surprised sales tax revenue is higher than projected, because we never followed through on our commitment to the people of New York from last year's budget that if we put back the sales tax of $110 and below for clothing and footwear, we would sunset it. We are not sunsetting it. We have not done it up until today, and we do not do it in this budget.

However, we did decide to follow through on our commitment to wealthier New Yorkers when we had scheduled a personal income tax rate reduction for people earning $150,000 to $500,000 a year, and that we did make good on. So we gave wealthy New Yorkers the tax cut we told them we would do from last year's budget, and we have not given lower-income and working New Yorkers the sales tax cut that we promised them.

It's a regressive tax, the sales tax. It hits poor New Yorkers and working New Yorkers much, much harder than well-to-do New Yorkers. So one of the reasons we have some flexibility in our revenue is because we're not following through on the commitments

we made to the majority of New Yorkers.

We also are not following through on the commitment we made to New York City in last year's budget to provide them the $170 million per year to help them resolve their MAC debt problem. We so failed to do it this year that they had to spend another $500 million, unanticipated in the city budget, because we didn't pass a budget in time to give them the $170 million of added Local Government Assistance Corporation money that we promised in last year's budget. And we don't fix it in this budget, because while we move forward with 170 million for the coming year, we don't give them the 170 million we owe them from the year that has now come and gone.

We do give New York City some of the things they asked for, although in comparison to the monies that they need from the state and failed to get in education funding and failed to get through any of the budget bills that are moving through this house tonight or this afternoon, we have certainly failed the City of New York. And

we've gone over those issues extensively over the last several months.

We also are deciding to give additional tax cuts in this bill when we're not sure what the revenue and expenditures are. Again, as I raised earlier in the year when this came up as part of a separate tax-cut bill, we've not moved forward on our commitments for education funding, we've not moved forward on any number of commitments to the people of the State of New York in every county. We've certainly been shortchanging New York City in any number of ways, and working-poor and poor people in the State of New York.

But we decided in this bill to do a sales tax exemption on private jet fuel, a sales tax exemption on aircraft-parts service and storage.

We are not doing our job. A revenue bill not only should have numbers attached, it seems relatively obvious, not only should be passed before you start to spend the money in expenditure bills, a revenue bill should also ask the question not

only where are we getting our tax revenue and where are we choosing to cut taxes, but what have we been doing with our tax expenditures up until now? Over $20 billion a year is not collected by the State of New York through tax exemptions and credits and expenditures that we have passed, in some cases decades ago, and never reevaluated the impact of.

We have failed completely in our assignment on revenue to the State of New York and to the people of the State of New York with this bill. I don't believe any of us could accept passage of this bill and believe that we've gone home saying we have a balanced budget for the people of New York State.

I will be voting against this bill. I don't know how anyone can vote for it.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Sabini.

SENATOR SABINI: Thank you, Madam President. If Senator Volker would yield for a question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

SENATOR SABINI: Through you, Madam President, I was just -- in this bill, is there any expansion of video lottery terminals in the language of this bill?

SENATOR VOLKER: The answer is no, there's no expansion of video lottery terminals.

SENATOR SABINI: Okay.

Madam President, if, through you, I could ask Senator Volker another question.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT McGEE: Senator Volker yields.

SENATOR SABINI: Does the revenue bill anticipate revenue from locations at Yonkers Raceway and Aqueduct Racetrack?

SENATOR VOLKER: Not for this year it doesn't, because they're not open. We do anticipate at some point, we hope, to get some revenue, but there's no revenue actually in here because they're not open yet.

ACTING PRESIDENT McGEE: Will you excuse the interruption for just one moment, please.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President. There will be an immediate meeting of the Rules Committee in the Majority Conference Room, please.

ACTING PRESIDENT McGEE: Immediate meeting of the Rules Committee in the Majority Conference Room, please.

Thank you very much, gentlemen, for the interruption. Please continue, Senator Sabini.

SENATOR SABINI: That's quite all right, Madam President. I actually have to go to the Rules Committee now, so it's part of the interruption.

Thank you very much, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 1943 are Senators Andrews, Duane, L. Krueger, Kuhl, LaValle, Padavan, Sabini, Schneiderman, and A. Smith. Also Senator Parker. Ayes, 49. Nays, 10.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. Can we now call up Calendar Number 1938, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1938, Senate Budget Bill, Senate Print 6051A, an act making appropriations for the support of government: Legislature and Judiciary Budget.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk, Madam President?

ACTING PRESIDENT McGEE: There is a message.

SENATOR MARCELLINO: Move to accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. All those in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The motion is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: This, I believe, is the last of the major budget bills. It is the legislative and judiciary budget. And it includes the numbers that were sent to us by the judiciary that -- with a small increase, and includes our numbers, including something we have not seen since April 1st, which is pay. And this is the bill.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we return to reports of standing committees.

I believe you have a report of the Judiciary Committee at the desk. I ask that it be read.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nomination.

As a justice of the Supreme Court of the Fifth Judicial District, Donald A. Greenwood, of Jamesville.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Madam President, I'm very proud to rise to move the nomination of Donald A. Greenwood, of Jamesville, for Supreme Court justice for the Fifth Judicial District.

I've known soon-to-be Judge Greenwood for many years. And I mentioned in the Judiciary Committee the breadth of background that he has in the practice of law, from prosecuting cases in the district attorney's office, from handling county attorneys' type work, by being a town attorney for one of the largest towns in the state, from civil actions that he dealt with, whether it be a trial of a case or whether commercial transactions -- just an incredible breadth of experience in the practice of law.

Which is obviously needed for a Supreme Court justice who presides over trials over all of these types of cases, maybe even as importantly as the judicial demeanor that I know he is going to have, and the sense of fairness that he has in dealing with the

people and in dealing with the cases that he's been involved with.

So I'm very pleased to move the nomination of Donald Greenwood, and I praise Senator -- excuse me, former Senator and now Governor Pataki for this nomination.

And I should mention that with Donald Greenwood is his wife, Paula, who's due with her second child any minute now -- and I'm glad the budget bills passed as quickly as they did -- daughter, Teresa; mother, Mary; and stepfather, Bill Glazier.

ACTING PRESIDENT McGEE: All in favor of the confirmation of Donald A. Greenwood, of Jamesville, as a justice of the Supreme Court of the Fifth Judicial District will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The nominee is now confirmed.

We are joined this evening in the gallery by Judge Greenwood. And he is

accompanied by his wife, Paula, his daughter, Teresa, and his parents, Mary and Bill Glazier.

On behalf of the New York State Senate, may I say congratulations, Your Honor, it's good to have you aboard.

(Applause.)

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we adopt the Resolution Calendar at this time.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we take up Calendar 1932.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 1932, by Senator Marcellino, Senate Print 7726, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk, Madam President?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR MARCELLINO: Move to accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. Those in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read.

THE SECRETARY: Section 16. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we call up Calendar Number 1910 at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1910, by Senator Farley, Senate Print 7710A, an act to amend the Banking Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR MARCELLINO: Move to accept, please.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. All in favor of accepting the message will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, at this time can we return to reports of standing committees.

I understand you have a report of the Rules Committee at the desk. I ask that

it be read now.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 5348B, by Senator Duane, an act to amend Chapter 292 of the Laws of 1904;

6100B, by Senator Volker, an act to amend the Real Property Law;

7278, by Senator Saland, an act to amend the Education Law;

7492A, by Senator Marcellino, an act to amend the Education Law;

7691, by Senator Fuschillo, an act to amend a chapter of the Laws of 2004;

7725, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 7736, by Senator Padavan, an act to amend the Tax Law and the Administrative Code of the City of New York.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator

Marcellino.

SENATOR MARCELLINO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT McGEE: All in favor of accepting the report of Rules Committee will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we stand at ease momentarily, please.

ACTING PRESIDENT McGEE: The Senate will stand at ease momentarily.

(Whereupon, the Senate stood at ease at 8:04 p.m.)

(Whereupon, the Senate reconvened at 8:09 p.m.)

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Would you

recognize Senator Krueger, please.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. We did a vote when I was at Rules. I would like unanimous consent to be voted in the negative on Calendar 1938, Budget Bill 6051A.

ACTING PRESIDENT McGEE: Without objection.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. If I too could have unanimous consent to be recorded in the negative on Calendar Number 1938.

ACTING PRESIDENT McGEE: Without objection.

Senator Sabini.

SENATOR SABINI: Madam President, I too was in Rules, and I'd like unanimous consent to vote in the negative on Calendar Number 1938.

ACTING PRESIDENT McGEE: Without objection.

Senator Marcellino.

SENATOR MARCELLINO: If I could have just one second, please.

ACTING PRESIDENT McGEE: One moment.

SENATOR MARCELLINO: At this time, Madam President, can we move Calendar 64B, noncontroversial reading.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1944, Senator Duane moves to discharge, from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 8697B and substitute it for the identical Senate Bill Number 5348B, Third Reading Calendar 1944.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1944, by the Assembly Committee on Rules, Assembly Print Number 8697B, an act to amend Chapter 292 of the Laws of 1904.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1945, Senator Volker moves to discharge, from the Committee on Judiciary, Assembly Bill Number 76B and substitute it for the identical Senate Bill Number 6100B, Third Reading Calendar 1945.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1945, by Member of the Assembly John, Assembly Print Number 76B, an act to amend the Real Property Law, in relation to establishing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 365th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1946, Senator Saland moves to discharge, from the Committee on Finance, Assembly Bill Number 11203 and substitute it for the identical Senate Bill Number 7278, Third Reading Calendar 1946.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1946, by the Assembly Committee on Rules, Assembly Print Number 11203, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of June.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1947, by Senator Marcellino, Senate Print 7492A, an act to amend the Education Law and the Executive Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Balboni, to explain his vote.

SENATOR BALBONI: Madam President, I rise to explain my vote on this bill.

This is a bill that has been introduced by Senator Marcellino in response to the school scandals. I represent Roslyn School District, and this is of enormous importance to the residents of my district and

I believe for the residents of this state.

This approach is clever, this approach is creative. It provides a funding stream that is provided by the school districts themselves.

However, I'm sorry that we do not have a two-house bill. I'm sorry that we've not been able to give the Comptroller a transitional funding pot to be able to move forward on the funding of the audits that are out there right now.

However, as Senator Ken LaValle has acknowledged, and Senator Marcellino, there's going to be more work on this issue. And I hope that we will come back and do a more comprehensive effort to try to reform how audits are done and how school districts perform in this state in the near future.

I'm going to vote in favor of the measure. Thank you.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

This bill is a good beginning in

dealing with a very, very complex problem, a problem that many have read about, school scandals on Long Island. But they could be anywhere in the state.

The problem is one that will require focus on the part of the school superintendents and the school boards to find out statewide what kinds of changes need to be done by their own initiative and new procedures and controls within the school district.

Strengthening whistle-blower laws. Strengthening and additions to establishing something like an audit committee whose sole function will look at and oversee the local audits, whether they be done by the district or the Comptroller. Involvement of the district attorney's office, the Comptroller's office, the Education Department.

And so I'm sure before this year is over we will see other pieces of legislation that will supplement the Marcellino initiative.

I would say, on Long Island, Senator Marcellino, Senator Balboni, myself

and others, and also Assemblyman DiNapoli and Assemblyman Sidikman, really sitting down, meeting with school board members and superintendents to come up with a comprehensive approach that will give the school districts the kinds of instruments they need to prevent those who have a larcenous mind and heart and to protect our taxpayer dollars that should be going to our children's education.

I vote in the affirmative.

ACTING PRESIDENT McGEE: You will be recorded in the affirmative, Senator LaValle.

SENATOR MARCELLINO: Madam President.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: To explain my vote.

ACTING PRESIDENT McGEE: Senator Marcellino, to explain your vote.

SENATOR MARCELLINO: Madam President, I agree with my colleagues wholeheartedly. This is a first step. It is

not the end of the line. More needs to be done with respect to making sure that taxpayers' dollars are protected and that the young people who are going to school for an education get the benefit of every dollar that's been appropriated by the taxpayers for their education.

So we look forward to the future on this bill, and we look forward to working with our colleagues and creating even more, so that this can be done in an appropriate manner. This bill is a good first step, and we're pleased and we hope the other house would move on this bill.

Thank you. I vote aye.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1948, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 11765 and substitute it for the identical Senate Bill Number 7691,

Third Reading Calendar 1948.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1948, by the Assembly Committee on Rules, Assembly Print Number 11765, an act to amend a chapter of the Laws of 2004 amending the General Business Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1949, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 11753A, and substitute it for the identical Senate Bill Number 7725,

Third Reading Calendar 1949.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1949, by the Assembly Committee on Rules, Assembly Print Number 11753A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos, that completes the noncontroversial reading of Calendar 64B.

SENATOR SKELOS: Madam President, is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: There is

no housekeeping at the desk.

SENATOR SKELOS: On behalf of Senator Bruno, I'd like to announce that there will be a meeting of the Majority at 10:00 a.m. tomorrow morning, and that session -- Senator González.

SENATOR GONZALEZ: Yes, Madam President, there will be a meeting tomorrow morning at 10:00 a.m., Minority conference.

ACTING PRESIDENT McGEE: There will be a meeting of the Majority in the Majority Conference Room at 10:00 a.m. tomorrow morning.

There will be a meeting of the Minority in Room 314 at 10:00 a.m.

Senator Skelos.

SENATOR SKELOS: Madam President, would you recognize Senator Saland, please.

ACTING PRESIDENT McGEE: Senator Saland.

SENATOR SALAND: Thank you, Madam President. I would like unanimous consent to be recorded in the negative on Calendar 1945, Senate Number 6100B.

ACTING PRESIDENT McGEE: Without

objection.

Senator Skelos.

SENATOR SKELOS: Madam President, I'd like to recommit to the Committee on Rules the balance of the calendar.

ACTING PRESIDENT McGEE: So ordered.

SENATOR SKELOS: And there being no further business to come before the Senate, I move we stand adjourned until Thursday, August 12th, at 10:30 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Thursday, August 12th, at 10:30 a.m.

(Whereupon, at 8:20 p.m., the Senate adjourned.)